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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 08-13555-JMP

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In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC.,

Debtor.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

August 30, 2010
9:33 AM

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

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Evidentiary Hearing RE: 60(b) Motions.

Transcribed by: Pnina Eilberg

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1 P R O C E E D I N G S

2 THE COURT: Be seated, please. Good morning. Let's
3 proceed.

4 MR. SCHILLER: Good morning, Your Honor. For the
5 record, Jonathan Schiller.

6 In terms of our plan for today and this week, as the
7 Court knows from Friday, we will be calling Liz James, a
8 Barclay's executive, whose testimony relates to the dispute
9 over the transfer of margin that's held to secure the exchange
10 traded derivatives. That dispute concerns the amount of margin
11 in issue, delivered -- some delivered, some undelivered in the
12 order of magnitude of three to four billion dollars in margin
13 assets.

14 Ms. James, who's not in the courtroom, she's outside
15 the courtroom waiting to come in; will explain her discussions,
16 in terms of where she fits in, Judge. She will explain her
17 discussions with Lehman personnel concerning the transfer of
18 Lehman's exchange traded futures business to Barclays.

19 She will describe her discussions with Lehman of the
20 margin or collateral of that business and that all margin or
21 collateral associated with those accounts would transfer to
22 Barclays upon sale.

23 She'll also describe her efforts with Lehman to gather
24 information and assemble a plan to facilitate the transfer of
25 that futures business. She'll describe the difficulties

1 Barclays encountered prior to the sale in obtaining information
2 about its exchange traded derivatives accounts and the risks
3 that Barclays assumed by taking over the obligations associated
4 with those accounts.

5 She'll testify about her interactions with the trustee
6 that led to the transfer of some Lehman futures accounts,
7 including the margin or collateral associated with those
8 accounts to Barclays upon sale. And she will detail for Your
9 Honor, finally, the amounts and locations of the margin and the
10 collateral that the trustee has yet to deliver to Barclays.

11 After Ms. James' testimony we planned to present the
12 video deposition of Andrew Keller, who is a 30(b)(6) witness
13 from Simpson Thacher, as Your Honor knows that's one of the law
14 firms that represented Lehman in negotiating the sale
15 transaction. Mr. Keller was a witness designated by Simpson
16 Thacher to address certain 30(b)(6) topics. His deposition is
17 about thirty-five minutes long. The trustee has objected to
18 one portion of that video and we've agreed, with Your Honor's
19 permission, to briefly argue that for you after this
20 examination and before the video is played.

21 THE COURT: Okay. Fine.

22 MR. SCHILLER: We will now call Liz James. Mr. Hume
23 will conduct the examination, Judge. Thank you.

24 THE COURT: Thank you.

25 (Pause)

1 THE COURT: Come here. Please raise your right hand,
2 Ms. James.

3 (Witness duly sworn)

4 THE COURT: Please be seated and please speak up.

5 THE WITNESS: Thank you.

6 MR. HUME: Good morning, Your Honor.

7 THE COURT: Good morning.

8 DIRECT EXAMINATION

9 BY MR. HUME:

10 Q. Good morning, Ms. James.

11 A. Good morning.

12 Q. Ms. James, could you begin by telling the Court what your
13 position is at Barclays?

14 A. I am a director in the futures business at Barclays
15 Capital.

16 Q. And did you work on matters related to the Barclays
17 acquisition of Lehman during the week of September 15th, 2008?

18 A. I worked on how we would take over the futures business
19 and originally from the 15th it was to deal with the customer
20 side because Barclays was taking that regardless of whether the
21 broker/dealer worked through or not.

22 Q. Before we get into the details of that I just want to have
23 you explain, if you would, could you explain your background,
24 generally, in working in the business of exchange traded
25 derivatives?

1 A. Certainly. I have been in the business for twenty-five
2 years, between options -- operations and the business. So I've
3 covered all aspects of the futures business.

4 Q. And do exchange traded derivatives consist of both options
5 and futures?

6 A. Yes, they do and also options on futures. So we make the
7 distinction, options aren't only the equity options and index
8 options that are cleared on the OCC and then futures and
9 options on futures, which are what cleared on the other
10 exchanges and clearing houses.

11 Q. And does the exchange traded derivative business also
12 include margin or collateral that's posted to secure
13 obligations related to the exchange traded positions?

14 A. Yes, it does. The clearing houses actually take margin to
15 protect themselves.

16 Q. And is that true both for options and futures?

17 A. Yes, it is.

18 Q. Are you currently -- do you currently have any positions
19 with the Options Clearing Corporation or on a committee related
20 to the Options Clearing Corporation?

21 A. Yes, I do. I actually chair the futures subcommittee for
22 the OCC, which actually means that what I do, I organize cause
23 between the FCMs, the futures commission merchants that are in
24 that business, with the exchanges that clear out the OCC and
25 the OCC themselves to try and iron out any issues, concerns,

1 new products, new systems. Just to try and resolve anything
2 prior to anything going live.

3 Q. Can you explain, again, what an FCM is?

4 A. An FCM is a futures commission merchant and it is actually
5 somebody that is a clearing member on a clearing house that it
6 allowed to clear business on behalf of customers and
7 proprietary business if they trade for themselves by house
8 business, as we call it.

9 Q. You mentioned the phrase clearing member, can you explain
10 what that means?

11 A. A clearing member is somebody that has a relationship with
12 a clearing house that has guaranty funds, default funds in
13 place, is adequately capitalized as well to actually clear
14 customers' business and they, for the futures side, are
15 adhering to the CFTC regulations, the Commodities Futures
16 Trading Commission, and for the options side with the SEC rules
17 and regulations.

18 Q. And before the Lehman liquidation in September 2008, was
19 the Lehman broker/dealer, the entity LBI, a clearing member
20 with the Options Clearing Corporation?

21 A. Yes, they were.

22 Q. Did LBI also trade in exchange traded derivatives on
23 exchanges where it was not the clearing member?

24 A. Yes, they did and that's where we use, what we call, their
25 affiliates or third-party brokers.

1 Q. Now on the subject of margin that we're here to -- that
2 you're here to give testimony about, can you explain why it is
3 that margin has to be posted with an exchange or clearing
4 house?

5 A. Margin -- the clearing house -- what the clearing house
6 does is actually stands in between every single transaction
7 that's done. So every buy and every sell the clearing house
8 stands in the middle. But what it does is it protects itself
9 so it takes margin, collateral, whichever terminology you're
10 used to, they both get used, to insure that trading each day
11 they are never at risk.

12 So in the futures markets we have what we call limit up
13 and limit down. And what this does is the initial margin is
14 set by the clearing house to determine the maximum amount they
15 will allow the market to move, up or down, in one given day.
16 If you go outside of that range the exchange normally halts
17 trading and will actually take more collateral from you to
18 protect themselves.

19 Q. And is that true, conceptually, both with options and
20 futures?

21 A. Yes, it is.

22 Q. And let me make sure some of that is made clear. Can an
23 exchange traded derivative position, either an option or a
24 future, create liability or exposure for the clearing member?

25 A. Yes, it can. The problem is is the markets can be very

1 volatile, as they were between the 15th and two, three, four
2 weeks after. So you don't know how the market's going to
3 react, the way it's going to move, so the liabilities can be
4 fairly horrendous.

5 Q. And does a clearing member have liabilities both for its
6 own positions and for any other positions that are traded
7 through that clearing member by customers?

8 A. Yes, it does. So for its own positions of course it
9 doesn't know where the market's going to go but it's
10 responsible for settling those.

11 In regards to the customer's business, you hope that your
12 customer is credit worthy but when the markets are as volatile
13 as it was they may not be. They may be in trouble which means
14 as their clearing member you, as their XEM, you are responsible
15 for settling that margin on their behalf.

16 Q. So does -- the clearing member has an absolute obligation
17 to the clearing house or exchange for all positions traded
18 through that clearing member?

19 A. Yes, they do.

20 Q. And that's true whether the positions relate to customers,
21 affiliates, other brokers or the clearing member itself?

22 A. Yes. It's any positions that they are clearing at that
23 clearing house.

24 Q. Now LBI, in addition to being a clearing member on certain
25 exchanges, did LBI also trade exchange traded derivatives

1 through intermediate brokers on other exchanges?

2 A. Yes, they did. In the Asian exchanges and there was a
3 company in the U.S. where they're not clearing members.

4 Q. And in those overseas exchanges, were they part of LBI's
5 North American futures commissions business?

6 A. Yes, they are and the reason being is the way it works is
7 that when LBI is trading, as in when anybody is trading their
8 proprietary business, you're actually trading the markets
9 globally. So you're not just trading in the U.S. even though
10 they were a U.S. entity. They're actually trading everything.

11 Q. When LBI traded exchange traded derivatives through an
12 intermediate broker, was its obligations and exposure to
13 satisfy all obligations to the clearing member any less than
14 its obligations when it's a clearing member?

15 A. No. It's no difference whatsoever. You are responsible
16 for the positions and the margin requirements, initial margin
17 requirements, that you have.

18 Q. Now in your experience in the business, have you ever
19 worked on transactions in the past in which exchange traded
20 derivative businesses were acquired?

21 A. Yes, I have.

22 Q. And how many times?

23 A. Probably two to three.

24 Q. And in those prior transactions, was the collateral or
25 margin associated with the exchange traded derivative business

1 transferred to the acquirer?

2 A. Yes, they were. That is the normal practice in the
3 futures industry, the exchange traded derivatives business, is
4 that the margin, which is securing the positions that you have
5 on, is actually transferred. You wouldn't be taking a position
6 without the margin because your risks could be unbelievable.

7 Q. If you took the positions without the margin would you
8 have an immediate obligation to post margin?

9 A. Yes, you would.

10 Q. And if you acquire an account where exchange traded
11 derivatives are traded would you also acquire the margin in
12 that account or pledge to that account?

13 A. Yes, you would.

14 Q. And is that what happened in the past transactions you
15 worked on?

16 A. Yes, in every transaction in the past I've worked on that
17 is exactly what happens.

18 Q. What were those transactions, briefly, if you remember?

19 A. There was -- when I worked at ABM (ph.) back in 2000 they
20 actually made two acquisitions. They acquired the Merrill
21 Lynch Energy business and they also acquired the Lemura (ph.)
22 Futures business. And then the summer of, actually, 2008, at
23 Barclays, Barclays actually took over Sem energy business as
24 well.

25 Q. And when you say energy business, do you mean futures on

1 energy commodities?

2 A. Yes, I do.

3 Q. So they're exchange traded derivatives?

4 A. Yes, they are.

5 Q. They're futures?

6 A. Yes. Sorry.

7 Q. And in all of those transactions margin was transferred
8 with the business?

9 A. Yes, they were and in fact, just to let you know with the
10 Sem one, the margin was actually physically transferred by the
11 clearing house themselves because the positions were so large.

12 Q. Now coming to the events of the week of September 15th,
13 2008, do you recall Lehman filing for bankruptcy on or around
14 September 15th?

15 A. Yes, I do.

16 Q. And based upon -- well let me first begin, do you recall
17 what your first involvement was with a potential acquisition of
18 Lehman's exchange traded derivatives business?

19 A. My first involvement was on the Sunday night on the way
20 home, actually in the car with my boss Tim Slack (ph.), Tim
21 actually received a phone call from Kim Taylor at the CME
22 asking us if we would be prepared to talk to Jeff Jennings from
23 Lehman about taking over the customers' futures business that
24 they had.

25 We agreed. We then actually went into my house to use a

1 speaker phone, called them back and had a very brief
2 conversation with Jeff that said yes we would be willing to
3 talk to them and made arrangements to go into Lehman's office
4 at 7:45 the following morning.

5 Q. Now, did you say -- did the phone call come from the CME?

6 A. Yes, it did.

7 Q. And what is the CME?

8 A. The CME is the Chicago Mercantile Exchange. That's the
9 clearing member that clears the business for NYMEX, COMEX, CBT
10 which is the energy business, the gold and silver business and
11 the treasury.

12 Q. And all of that relates to futures trading?

13 A. Yes, it does.

14 Q. Exchange traded futures?

15 A. Yes, it does.

16 Q. And based on your experience in the industry, was it your
17 expectation at the time that the Lehman bankruptcy would impact
18 the ability of LBI to act as a clearing member in the various
19 exchanges where it had exchange traded derivatives?

20 A. Yes, it would and one of the biggest reasons being because
21 if they have no money -- the CFTC states very clearly that when
22 you're managing customer money you have to protect it and it
23 has to be in what we call segregated money and secured money,
24 which means that you are keeping that safe and it cannot be
25 actually held by anyone else.

1 You're also never allowed to go under secured at any point
2 during the day. So you have to make sure at all times the
3 customers are protected. So one of the problems is, with
4 Lehman going out of business, potentially if they had no money
5 of their own they wouldn't be able to keep that satisfied.

6 Q. And so was it your expectation that when the Lehman parent
7 company went bankrupt the broker/dealer would not be able to
8 fulfill its obligations to the clearing members or intermediate
9 brokers who had had exchange traded derivatives accounts?

10 A. That is. Yes. Yes.

11 Q. And is that -- as an example of that when the CME called
12 Barclays to ask if it would acquire the futures customer
13 business at the CME?

14 A. Yeah. I think they were very concerned and I think it was
15 actually proven on the Wednesday when Lehman actually couldn't
16 satisfy their CME margin for their proprietary business.

17 Q. So your initial contact with Lehman was actually
18 independent of the overall sale transaction, is that correct?

19 A. Correct. On the Sunday I actually had no idea.

20 Q. Did you then come to learn that there was a larger
21 transaction in which Barclays would acquire the entire
22 broker/dealer business?

23 A. Yes, I did.

24 Q. And did you come to learn that that larger acquisition
25 would include the exchange traded derivatives business?

1 A. Yes, I did.

2 Q. And did you learn that it was both options and futures?

3 A. Yeah, it was everything that we class under the exchange
4 traded derivatives world.

5 Q. During the remainder of the week did you make an effort to
6 learn as much as you could about the positions and the margin
7 associated with the Lehman exchange traded derivatives
8 business?

9 A. We spent a lot of time with the Lehman futures employees,
10 trying to understand where they had positions, what brokers
11 they used, where they held their bank accounts, where they held
12 their money market funds. Very much concentrated on the
13 customer side of the business but the house as well, in case
14 there was any house positions when and if we took over. And
15 there was lots of communications backwards and forwards. We
16 didn't actually get any of the open positions that there were
17 or the size of the amount of money on collateral that they were
18 holding and the reason being is Lehman's books and records were
19 in such a mess, I don't even actually think they knew
20 themselves where they were.

21 Q. Would you characterize what you did as due diligence?

22 A. I wouldn't call it due diligence, no.

23 Q. Why not?

24 A. Because to me due diligence is where you're actually
25 looking at their physical books and records. You're looking at

1 are they in SEG, are they in secured, are they fully funded,
2 are any of their customers in deficit, are their customers
3 fully paid up. That, to me, is due diligence in the business.

4 Q. So did you think you did not have either the time or
5 information to conduct what you would call due diligence?

6 A. Definitely not.

7 Q. Did you, notwithstanding the constraints of time and
8 limited information, make an effort to learn what you could
9 learn?

10 A. Yes, we made every effort that we possible could to
11 understand what we were walking into.

12 Q. In your -- and did you have discussions with your Lehman
13 counterparts in the exchange traded derivatives business?

14 A. Yes, I did. We spoke to them on the Monday, the Tuesday,
15 the Wednesday, I think pretty much every day that week.

16 Q. And in your discussions with Lehman did Lehman indicate
17 that Barclays, if the transaction went forward, would be
18 acquiring the margin or collateral associated with the exchange
19 traded derivatives business?

20 A. Yes. I mean, that is normal practice in the exchange
21 traded derivatives business. You -- I hate to say this but
22 you'd be crazy if you didn't take it. Sorry.

23 Q. It's okay. So let me just -- was it always your
24 understanding that the margin would be transferred with the
25 exchange traded derivatives business?

1 A. Yeah. Definitely.

2 Q. Did anyone ever say to you or suggest to you that the
3 margin, some or all of it, associated with the exchange traded
4 derivatives business, would not be transferred?

5 A. No.

6 Q. Did -- was there an actual discussion in which it was
7 expressly discussed that margin would be transferred?

8 A. Yes. Definitely.

9 Q. You should have a binder of exhibits in front of you.

10 A. Yup.

11 Q. Which I think has been handed out. And could you turn to
12 tab 2 of the binder, please.

13 MR. HUME: Tab 2 of the binder please, Your Honor.

14 Q. Tab 2 is BCI exhibit 217, it's in evidence and it is an e-
15 mail from Sean Burne (ph.) in futures sales to Liz James and a
16 number of other people at Barclays dated September 19th, 2008
17 at 14:50 GMT, which I think is about 10:50 in the morning New
18 York time. Do you see the document, Ms. James?

19 A. Yes, I do.

20 Q. And can you tell the Court who Sean Burne is?

21 A. Sean Burne was actually my boss at this time.

22 Q. Despite being --

23 A. He was the head of the U.S. futures business.

24 Q. Despite being your boss, did you ask him to prepare this
25 summary?

1 A. Yes, I did.

2 Q. And what was -- the first sentence in the e-mail says,
3 "This is an outline of what was discussed yesterday with
4 Lehman." Do you see that?

5 A. Yes, I do.

6 Q. And what does that refer to?

7 A. There is a spreadsheet that follows of where we
8 actually -- following discussions with Lehman we actually put
9 together a list of things that we need to insure that we did or
10 didn't miss. So get an understanding of what exchange is, who
11 their brokers were, what bank accounts they used, i.e. get full
12 information on the futures business itself and this was
13 particularly to do with the futures business rather than with
14 the OCC options business.

15 Q. It refers to a discussion the day before with Lehman, do
16 you remember that discussion?

17 A. Yes, I do.

18 Q. And was it in person or over the phone?

19 A. It was over the phone on the Thursday.

20 Q. And do you recall generally who the people were from
21 Lehman who were on the call?

22 A. I'm pretty sure it was the same people that we had met on
23 the Monday. So Jeff Jennings who ran the global business for
24 Lehman, Ron Filler who was their legal counsel who actually
25 came back as a consultant, Donna Moran (ph.) who was in their

1 sales. Adam Cohen (ph.) who was their -- one of their
2 relationship managers, Mike Macnavernia (ph.) who was in the
3 business on their IT side.

4 Q. Let me ask you, the document -- the attachment doesn't
5 actually have page numbers so I think we may have taken the
6 liberty of putting a tag on the page I wanted to ask you about
7 but if not it's one, two, three -- the fourth physical page on
8 the back of that if yours is double sided, which mine is.

9 A. Yeah.

10 Q. The one which at the top of it, on the top left, says U.S.
11 positions and trades.

12 A. Okay.

13 Q. Do you see that page?

14 A. Yes, I do.

15 Q. I want to make sure others are there. Can you describe
16 for the Court, generally, what is set forth on this page?

17 A. Generally what is set forth is a list of the exchanges
18 where they were clearing business. The questions on where were
19 their bank accounts held, where were the money market funds
20 accounts held, the top was actually giving us what their
21 memberships numbers were at the CME and NYBOT (ph.) which is
22 now the ICE Exchange, the status of the accounts both where
23 they were and pretty much -- most -- nearly all of the
24 information that you would need and require for taking over the
25 business.

1 Q. When you refer to house accounts can you explain --

2 A. Sorry.

3 Q. -- does that refer to Lehman accounts generally or Lehman
4 positions?

5 A. Yes, it does. It's position -- when I refer to house,
6 sorry and I know it's terminology, when we refer to house we're
7 referring to business that is being traded by Lehman itself.

8 Q. As opposed to customers?

9 A. Correct or its affiliates because normally you do carry
10 your affiliate position in house as well, in the futures side
11 of the business. Different in the OCC world.

12 Q. We'll come back to that later but was it sometimes unclear
13 whether affiliates were treated as customers or in-house?

14 A. Yes.

15 Q. On this page that we're looking at, is there anything on
16 this page that reflects a discussion you had with Lehman that
17 margin for the exchange traded derivatives business would be
18 transferred to Barclays as part of the overall acquisition?

19 A. Oh yeah. Definitely. One hundred percent. It actually
20 says very clearly margin with U.S. exchanges in clearing house
21 customers in-house.

22 Q. You're pointing to the third set of points

23 A. Sorry. Yes.

24 Q. It's highlighted up on the screen now.

25 A. Okay. And then margin with carrying brokers for customers

1 and house.

2 Q. And the reference to customer house, does that indicate a
3 discussion that both the margin associated with customer
4 accounts and positions as well as margin with house accounts
5 and positions would all be transferred?

6 A. That is correct. Yes.

7 Q. And was that discussed with Lehman in the teleconference
8 the day before?

9 A. Yes, it was.

10 Q. In the middle set of points there's a reference to
11 segregated and secured bank accounts.

12 A. Yup.

13 Q. You mentioned something about that earlier in your
14 testimony. Can you explain again what segregated and secured
15 accounts are?

16 A. Certainly. The CFTC sets segregated and secured and what
17 segregated means, it's the rules that CFTC uses, what that's
18 saying is any money for customers that has to be held true to
19 the CFTC rules and regulations and has to be held with --
20 inside the U.S. -- the United States. It cannot be held
21 outside of the U.S.

22 In regards to the secured money, it's actually normally
23 for where you're trading foreign business so while the money
24 can be held outside of the U.S. it can also be held inside the
25 U.S. but both of these accounts are actually designated as

1 customer segregated accounts or a customer secured account. So
2 it's very clear, this is, you know, it is money that is there
3 to protect the customers and it's customers' money or
4 collateral.

5 The seg and securities also, you have to actually insure
6 those accounts never ever go under seg or secured at any time
7 during the day. So normal practice is you actually have a
8 buffer of your own money in those accounts to insure that
9 doesn't happen because you could be in trouble.

10 Q. When you say you have to have a buffer of your own
11 money --

12 A. Yes.

13 Q. -- are you referring to the broker/dealer --

14 A. Yes.

15 Q. -- having to put its proprietary assets in the seg and
16 secured customer accounts?

17 A. Yes, I am.

18 Q. And it puts that money in over and above the amount that
19 is customer assets?

20 A. That's correct. Yes.

21 Q. And explain again why it does that.

22 A. So the reason it does it is that the CFTC states you are
23 never allowed to go under segged or undersecured. So, i.e. you
24 have to make sure that at any time your assets for your
25 customers are always higher than your liabilities and that's

1 intraday, which of course can be pretty hard to do especially
2 when you've got extremely volatile markets. So all of the FCMs
3 on the street actually put in a buffer that actually protects
4 that. You're insuring that at any time you are protected and
5 the customer is protected.

6 Q. Let me make sure I understand one other thing.

7 A. Certainly.

8 Q. In seg and secured accounts, you said something about them
9 being in the United States versus overseas?

10 A. Yes.

11 Q. If a seg and secured account is in the United States --

12 A. Yeah.

13 Q. -- can it still be pledged to secure obligations
14 associated with exchange traded derivatives in an overseas
15 account?

16 A. Segregated is purely for the exchanges within the U.S.
17 Secured is for exchanges outside of the U.S. and there are now
18 a couple of products that are inside.

19 Q. If there's a seg and secured account, either one, can the
20 exchange where the associated derivatives are trading, draw
21 down on that as security for the exposure created by the
22 derivative positions?

23 A. Yes, they can. They actually have what we term direct
24 debit authority over the bank accounts, to actually immediately
25 take the money. You can then go in and switch the money out

1 and put in collateral but, you know, treasuries or government
2 securities.

3 Q. So while the money's there to protect customers, is it
4 also pledged to be exchanged, directly or indirectly, so that
5 it can draw it down to protect itself against the exposure
6 created by the derivative positions?

7 A. Yes, it does.

8 Q. And so even if there's money in the account at all times,
9 it can be taken by the exchange?

10 A. Yes, it can and most of the exchanges take twice a day.

11 Q. And on this page, at the top line, there's a reference to
12 client business in CME 835 and NYBOT 858 question mark. Was
13 there an attempt, at this time and in this discussion you had
14 with Lehman, to identify where all of their different exchange
15 traded derivative accounts were?

16 A. Yes, it was. The main ones being CME and ICE, NYBOT
17 sorry; they've changed their name. One of the things about
18 that is, is that's where the largest set of positions were for
19 the customers so the easiest way, when you transfer, is to
20 actually rename those firms, which is why we have the firm
21 numbers up there.

22 Q. And were you able -- and did you want to know where the
23 accounts were so that you would know what's in the accounts and
24 what the exposure was?

25 A. Yes. The other thing is, certainly with the bank accounts

1 and the money market funds; we actually had to have letters
2 drafted to actually go to them approving them to transfer over
3 the collateral to us.

4 Q. Were you able, that week before the closing, to assure
5 yourself that you definitely had at least a list of knowing
6 where all the accounts were?

7 A. I can actually say, quite happily now, no we didn't. We
8 thought we did but we did not. This was the list that was
9 given to us, was that the definitive list -- actually, it
10 wasn't.

11 (Pause)

12 Q. You understand, Ms. James, that eventually, once Barclays
13 got all the information on all of the exchange traded
14 derivatives accounts and margin, under its accounting
15 statements Barclays showed some net value, positive value with
16 those accounts. Were you generally aware of that?

17 A. I am generally aware of that.

18 Q. As of the time of the closing of the transaction, on
19 September 22nd, 2008, did Barclays know and was it possible for
20 Barclays to know what, if any net value might be in these
21 exchange traded derivatives accounts?

22 A. No.

23 Q. Was it possible to know what the full extent of Barclays
24 risk exposure was with respect to these exchange traded
25 derivatives accounts?

1 A. No, not at all. And the thing that you have to remember
2 is we didn't know who the customers were. We didn't know
3 whether they were in credit or in deficit. The markets were
4 also extremely volatile so we didn't know what we were walking
5 into on the Monday morning in the ETD world.

6 Q. Was there concern at Barclays about the negative risk
7 exposure it was taking on by acquiring these exchange traded
8 derivatives accounts?

9 A. Yes, there was.

10 Q. With respect to options, did you receive any information
11 at all that helped you or that you used to attempt to analyze
12 what the exposure was?

13 A. We, on the -- I believe it was the Sunday or Saturday, I'm
14 sorry, the weekend gets very confusing, there was some
15 information actually sent to Tim Stack, who was my boss,
16 actually giving details of the equity options but unfortunately
17 the information that was sent was not sufficient to actually
18 figure out what the positions were. Plus, if we had got the
19 information Barclays wasn't an equities house. There's no way
20 we could have actually priced what was there known what was
21 there and known what the risk was.

22 Q. Let me ask you to turn, if you would, to tab 5 of the
23 binder which is Movant's Trial Exhibit 738.

24 A. Yes.

25 Q. This is an e-mail, I'm probably going to mispronounce his

1 name, but Christopher Minczek (ph.) --

2 A. Okay.

3 Q. -- to a number of different people. You are not on the e-
4 mail but it says "I've included short options, long shorts as
5 of yesterdays close." Do you see that?

6 A. Yes, I do.

7 Q. And it attaches a list of what are called long options.
8 It says, "LBI derivatives" at the top left of the attachment.
9 Do you see that?

10 A. Yes, I do.

11 Q. And you would understand LBI to be a reference to the
12 Lehman broker/dealer?

13 A. Yes.

14 Q. And are you familiar with this document?

15 A. Yes. I was actually shown it and asked to explain it.

16 Q. So you were asked -- were the people who were asking you
17 to do that people who didn't understand how to read it?

18 A. Correct. My boss Tim Stack.

19 Q. And when you looked at it, were you able to determine what
20 it was showing?

21 A. Unfortunately there's some key pieces of information
22 missing from this report. One of the biggest things being is
23 under where it says long, in the normal practice we talk in lot
24 size. We actually don't know what this number is. What I know
25 for a fact is there is no way that Lehmans had 152 million of

1 the SNP December puts, a strike of 1,400. You don't trade that
2 many lots in the exchange. There is no way.

3 Q. Right.

4 A. So we didn't actually know what that meant. Plus the
5 other thing is, is where it says price at the end we don't know
6 if that's the original trade price, if it's the closing price.
7 There's also no designation that tells us if this was house
8 positions or customer positions, which are some key pieces of
9 information that you need to look at the options.

10 Q. So is it your testimony that this information was simply
11 incomplete and insufficient to tell Barclays what the risk
12 exposure was with respect to the options positions held in the
13 Lehman OCC account?

14 A. Yes, I do.

15 Q. Let me ask you to turn to tab 6, which is BCI exhibit 263.
16 This is an e-mail from Frances Pern (ph.) who I'll represent, I
17 believe, is in the Lehman finance department, to Tim Stack whom
18 you reported to, correct?

19 A. Yes.

20 Q. And this e-mail says, "Tim, here are the OCC statements
21 for LBI as of 9/22, reflecting our cash and securities
22 collateral held for LBI account 074." Are you familiar with
23 the fact that Lehman's main account at the OCC was the 074
24 account for options?

25 A. Yes, I was made aware in this e-mail.

1 Q. And were you also asked to try to look at this document to
2 decipher what information it contained?

3 A. Yes, I was.

4 Q. And I should note for the record, this document was sent
5 Sunday, September 21st, the day before the closing.

6 A. Yes.

7 Q. Do you see that?

8 A. Yes, I do.

9 Q. And were you working that weekend at Barclays in an effort
10 to try to assess the risk exposure associated with Lehman's
11 exchange traded derivatives accounts?

12 A. We were actually working that weekend to insure that when
13 we took over, if we took over, if everything was approved, that
14 we had everything in place that we immediately needed to do to
15 transfer the bank accounts, to transfer the exchange
16 relationships, to transfer the broker/dealer -- the third party
17 brokers, to get an idea of what the customers positions were,
18 the house positions if there were any. It was a complete have
19 we got all our ducks in a row for Monday morning.

20 Q. Is one of the reasons you were doing that because Barclays
21 was hoping that the customers who came over on the futures side
22 would become its customers?

23 A. Yes, that's exactly what we were hoping for.

24 Q. And was one of the things you were trying to do to make
25 sure the customer accounts on the futures side transferred

1 smoothly and that those customers would be protected?

2 A. Yes. That's exactly what we were doing.

3 Q. Now, did you attempt to analyze the data attached to
4 Exhibit 263? Analyze or summarize it?

5 A. I summarized it. I didn't necessarily analyze it but I
6 summarized it.

7 Q. And can you turned to tab 7, which is BCI 958 -- well,
8 actually I think the one in your binder is Exhibit 963.

9 A. Yeah.

10 Q. This is an e-mail from you, to Tim Stack, Sunday,
11 September 21st at 22:01 GMT, which I think is about 6 o'clock
12 in the evening New York time.

13 A. Yeah.

14 Q. And I believe if you look at the time stamp on the
15 earlier, this shows you sent this about two hours after Tim
16 Stack received the other OCC statements. Does that look
17 correct?

18 A. That looks correct.

19 Q. And what are you sending to Tim Stack here?

20 A. I am actually sending Tim the balances for the house
21 accounts that Lehman had with the OCC for all of their exchange
22 traded derivatives, the futures and the options.

23 Q. And the balances are the amount of margin that is
24 deposited there versus the amount of requirement at that time?

25 A. Yes, it is. You can actually get a feel, when you look at

1 the requirements, for the size of their position.

2 Q. Now on the first page of the spreadsheet, and I apologize
3 we have to turn the binder around to see it properly, you list
4 a series of numbers and on the right-hand side there are two
5 numbers which we could blow up. One is called rolled up margin
6 deficit of a negative 379 million. Do you see that?

7 A. Yes, I do.

8 Q. And the other is called requirement of a negative 699
9 million. Do you see that?

10 A. Yes, I do.

11 Q. Now, to determined the total requirement for margin
12 deposits for these house accounts at that time. Did you have
13 to add those two numbers together?

14 A. Yes, I did.

15 Q. And so -- and I'm saying as of that time, are we talking -
16 - is this showing data as of the Friday?

17 A. This is actually showing data as of the Sunday which is
18 after the option expires. So the OCC actually had an option
19 expiry weekend that weekend. So these are the numbers after
20 all the exercises and assignments on the options.

21 Q. Now if you add those two numbers together you get to, I
22 believe, just under 1.1 billion dollars.

23 A. Yes.

24 Q. Does that sound correct?

25 A. Yeah.

1 Q. Now to the left of those two numbers does it list three
2 different types of margin collateral that's posted at the OCC
3 for Lehman?

4 A. Yes, it does.

5 Q. It lists cash of 881 million dollars, government
6 collateral 410 million dollars, are those government treasury
7 securities?

8 A. They would be treasury securities and that's the market
9 value with a haircut so that's a movable number.

10 Q. And then there's a letter of credit of 251 million, do you
11 see that?

12 A. Yes, I do, which we would not be taking because normal
13 practice is left over credits don't come.

14 Q. So let me make sure I understand that. Was it your
15 understanding at the time that the normal practice would be
16 that Barclays would eventually need to replace that with its
17 own letter of credit?

18 A. Correct. Yes, they would.

19 Q. So the total collateral shown there is just less than 1.5
20 million, if my math's correct. Maybe it's easier if we look at
21 the next page. Does the excess deficit column, on the next
22 page, show the difference between the three types of collateral
23 added up minus the total requirement that we talked about?

24 A. Yes, it does.

25 Q. So just so it's clear for everyone --

1 A. Sorry.

2 Q. -- based on these numbers on this document this shows an
3 excess of 464 million dollars?

4 A. That Lehman had with the OCC at this time, yes.

5 Q. For those house accounts?

6 A. For those house accounts.

7 Q. Now, would it have been your understanding at the time
8 that 250 million of that 464 million would not be of any
9 benefit to Barclays because Barclays would have to go out and
10 pay for its own letter of credit?

11 A. Correct. Yes.

12 Q. So that, in a sense, reduces the excess down to 210
13 million?

14 A. Yeah. But that's excess as per this day.

15 Q. Right. Are you saying that that excess may not be enough
16 to cover the exposure that Barclays was taking on?

17 A. The markets at that time were really volatile and you
18 don't know where you're going to be the following day and
19 whether your excess is now actually a deficit. Twenty-four
20 hours, which is when we eventually took over the positions, is
21 a long time in those markets.

22 Q. Looking at that, on September 21st, 2008, would you have
23 thought that's great we made 250 million -- 210 million dollars
24 or would you have thought it's good that we're covered but we
25 still have risk that excess could be eaten up over night?

1 A. Oh, my thought would have been we're at risk because we've
2 got no idea what the positions are; we had no idea what
3 products there in. The market was moving so much. Even on the
4 Barclays' side, the week from the 15th onwards, our margin
5 calls were, within Barclays, were two to three hundred million
6 a day.

7 Q. Of additional margin --

8 A. Of additional margin on top of what you're already paying.

9 Q. We may come back to this but I want to move to tab 8 of
10 the binder, which is another sideways document.

11 MR. HUME: I apologize, Your Honor.

12 Q. It's BCI Exhibit 646. And if we could go, please, to the
13 last page in the document. This document -- do you recognize
14 this document, Ms. James?

15 A. I have seen this recently, yes.

16 Q. Do you recognize that it lists on the document all of
17 Lehman's OCC accounts that it held at the time of the
18 transaction?

19 A. Yes, it does.

20 Q. And it shows, for each count -- for each date from
21 September 15th through October, what the requirements were for
22 margin and what the different kinds of margin were that were
23 posted. Do you see that?

24 A. Yes, I do.

25 Q. I'd like to look starting with September 15th; does it

1 show that the total requirement from that date was 789.6
2 million?

3 A. Yes, it does.

4 Q. And does it show that on September 16th that requirement
5 went up to 1.359 billion dollars?

6 A. Yes, it does.

7 MR. MAGUIRE: Your Honor, I don't have an objection to
8 the witness reading the document but I don't believe the
9 witness has any foundation to testify to any of what is set
10 forth in this document.

11 THE COURT: I don't know that yet but it sounds like
12 it's a foundation objection to this line of questioning.

13 MR. MAGUIRE: Yes, Your Honor.

14 MR. HUME: It's an objection to a pending question.
15 I'm happy to make sure we lay the foundation for the question
16 I'm going to ask.

17 THE COURT: Okay. At the moment I don't even know
18 what this document is. So why don't we figure out what we're
19 dealing with and then we can find out if the witness is in a
20 position to talk about it.

21 Q. Ms. James, are you aware -- are you familiar -- have you
22 seen this document before?

23 A. Yes, I have.

24 Q. Is it your understanding that this document sets forth
25 information gathered from the Options Clearing Corporation

1 showing the amount of margin requirements Lehman's accounts had
2 for each of these days and the amount of margin posted to those
3 accounts for each of these days?

4 A. Yes, it does.

5 MR. MAGUIRE: No foundation, Your Honor.

6 Q. Ms. James, did you work on the exchange traded derivatives
7 part of this transaction in trying to learn this kind of
8 information at the time of the sale?

9 A. Yes, I did.

10 Q. And did you just testify that at the time that you
11 summarized a set of information from the OCC showing the amount
12 of margin requirement and excess, you believe there was a
13 concern that that excess could be eaten up very quickly?

14 A. Yes, I did and this document proves that.

15 MR. MAGUIRE: Your Honor, I don't believe the witness
16 has established that she prepared this document or has any
17 basis to testify about what this document proves.

18 THE COURT: I think she's established that she didn't
19 prepare it. That it was somebody else's document that she
20 looked at and she has a view of the information that she is
21 reading off of the document. Do I understand that correct?

22 MR. HUME: I think that's accurate, Your Honor.

23 THE COURT: I think she can certainly testify as to
24 her interpretation of somebody else's document and you can
25 certainly cross examine all you want on it. So the foundation

1 objection is overruled at this point.

2 MR. HUME: Let me just do two more days -- two or
3 three more days anyway.

4 BY MR. HUME:

5 Q. So between the 15th and the 16th is it your understanding
6 that this document shows that the margin requirement for the
7 Lehman accounts went up by almost 600 million dollars?

8 A. Yes, it does.

9 Q. And then on the 17th the requirement went up to 1.4
10 billion?

11 A. Yes, it does.

12 Q. And on the 18th the requirement went up to over two
13 billion dollars?

14 A. Yes, it does.

15 Q. And so this document shows that from the 15th of September
16 to the 18th of December, in those three days, the margin
17 requirement for Lehman went up by over 1.2 billion dollars?

18 A. Yeah. It reflects --

19 Q. And is that consistent with the risk exposure that you
20 were testifying about earlier?

21 A. Yes, it does.

22 Q. Now these accounts shown on this document, you're familiar
23 with those account numbers?

24 A. Yes, I am. They are Lehman's OCC account numbers.

25 Q. Let me ask you quickly to turn to tab 9 of the binder.

1 Tab 9 is BCI exhibit 3A, which is a transfer and assumption
2 agreement. The first whereas clause says, underneath
3 witnesseth, says, "Whereas Lehman is a clearing member of OCC
4 and carries one or more accounts, number 74, 84, and 273,
5 collectively the account." Do you see that?

6 A. Yes, I do.

7 Q. And do you understand, from your own personal knowledge,
8 those to be the Lehman accounts at the OCC?

9 A. Yes, I do.

10 Q. Down under paragraph 1A of this agreement it states, "For
11 good and valuable consideration the receipt and sufficiency of
12 which are hereby acknowledge, Lehman hereby sells, assigns,
13 transfers and sets over to Barclays, without recourse or
14 without representation or warranty other than expressly
15 provided herein, all of Lehman's rights, title, interests,
16 powers, privileges, remedies, obligations and duties into,
17 under and in respect of the account as of the effective date,
18 including with respect to the clearing fund deposit, all margin
19 deposits held by OCC with respect to the account and all
20 settlement obligations with regard to transactions in cleared
21 contracts and all rights and obligations in respect of exercise
22 of option contracts and assignments of such exercises."

23 Is that provision, Ms. James, consistent with your
24 understanding at the time, working on this transaction, of what
25 was happening with respect to Lehman's OCC accounts?

1 A. Yes. And this is normal, standard practice when you're
2 taking over a business.

3 Q. And is it consistent with your understanding that Barclays
4 was taking both obligations and whatever --

5 MR. HUME: Strike that.

6 Q. Is it consistent with your understanding that Barclays was
7 taking both the obligations with respect to the account and
8 whatever margin deposits were in the account to protect against
9 those obligations?

10 A. Yes, I am. You would not take the accounts without taking
11 the collateral, the margin that protects them.

12 Q. Now with respect to futures, were you able to get more or
13 less information than you did with options?

14 A. Less. We got none.

15 Q. Did you ever get a listing of all futures positions that
16 Lehman had?

17 A. No.

18 Q. Did you ever get a listing of all of the margin or
19 collateral posted to the Lehman futures accounts?

20 A. No. We were given bits of information but we never got an
21 exhaustive list.

22 Q. Let me ask you to turn to tab 3 of your binder. Movant's
23 Trial Exhibit 30 is an e-mail from Tim Stack, again, to Stephen
24 King, and others from Barclays, dated Sunday, September 21.
25 The subject heading is status of VIX and equity options

1 accounts. Let me ask you first, what is VIX, V-I-X?

2 A. VIX is the volatility index futures product that is
3 actually traded on the CFE, which is the Chicago Futures
4 Exchange, which is owned by the CBOE, which is the Chicago
5 Board Options Exchange which clears at the OCC.

6 Q. And did there come a time over the weekend before the
7 closing that Barclays came to learn that Lehman had a
8 significant position these VIX futures?

9 A. Yes.

10 Q. Are they futures or options?

11 A. They're futures. There's both. There's actually -- the
12 VIX is actually both. In this regards we're actually talking
13 about futures because the options actually clear in the equity
14 options accounts for the VIX.

15 Q. To state the question again --

16 A. Sorry.

17 Q. -- more clearly. Did there come a time, over the weekend
18 before the closing, that Barclays came to learn of a large
19 Lehman VIX position?

20 A. Yes. I was actually sitting in Tim Stacks office when
21 somebody came running in saying there's a huge position we're
22 going to need to take over in VIX and equity options, with pure
23 panic in her voice.

24 Q. Why did that cause panic?

25 A. One, because where Barclays is not equity options experts

1 or even VIX experts at that time and we were originally under
2 the impression that all of the house positions had been closed
3 down. We then, of course, found out that they had not been
4 unliquidated.

5 Q. And was the VIX position one that you believed created
6 significant exposure for Barclays?

7 A. Very significant exposure for Barclays.

8 Q. Is that because those positions can create large
9 liabilities when the financial markets are extremely volatile?

10 A. Yeah. It's a volatility index. It's a very, very
11 volatile product. It moves around very fast.

12 Q. The rest of this e-mail refers to other futures positions.
13 The second line says, as an aside, "Just have been advised of
14 futures position on LBI futures for SFE, Sidney Futures
15 Exchange, and for Montreal." Was that consistent with your
16 recollection that you were learning about new positions right
17 up until the closing and then after the closing?

18 A. Yes, that's correct.

19 Q. And it goes down to say, in that next paragraph it talks
20 about the Sydney house position. It says something about the
21 initial margin and how much they're holding and it says "We're
22 not too concerned." So for that one you weren't too concerned
23 because there looked to be enough margin. Is that what that
24 says?

25 A. That's exactly what that says.

1 Q. But then it says, "Sydney markets are opening in forty
2 minutes." This is at 6:11 p.m. Sunday before the closing, is
3 that right?

4 A. That's correct. Yes.

5 Q. It then talks about a Montreal position on the Montreal
6 exchange. It says, "Not material." And at the last sentence
7 it says, "I have people here that can liquidate the Aussie
8 piece, Stephen can you call me on this." This is Tim Stack,
9 your boss, who's writing this?

10 A. Yes, it is.

11 Q. Was Barclays able, on Sunday night or Monday morning to
12 take control of these positions and these various overseas
13 exchanges to liquidate them and control their exposure?

14 A. No we're not because at this point they don't belong to
15 Barclays so we have no authority to go in and sell out -- close
16 out those Sydney positions. So it was actually Monday evening,
17 Tuesday morning Sydney time before we could actually deal with
18 them.

19 Q. Did that create additional risk and exposure for Barclays?

20 A. Yes, because you've got a whole day's worth of trading on
21 the Sydney exchanges, the Asian exchanges, the European
22 exchanges and even the U.S. exchanges that could impact where
23 those markets go.

24 Q. Now you said earlier, when we started talking about what
25 Barclays knew at the time of closing, that Lehman's records

1 were in a mess. With respect to the futures was there a
2 problem specifically in extracting the information about
3 futures positions from Lehman?

4 A. There was a huge issue with extracting positions from the
5 Lehman systems. Lehman's actually shared their books and
6 records between LBI and LBIE; they had a shared futures system.
7 They also, within that, had their FX trading for customers so
8 that actually comingled futures trading and FX traded in the
9 same account, which is not normal practice.

10 So one of the problems is you have to break them apart to
11 figure out what's FX, what is futures. The other thing is,
12 because LBIE had already -- was already in bankruptcy, they
13 were having positions moving all over the place, attempting to
14 close them out. Things weren't being booked so things were not
15 clean. You couldn't tell what were our positions, you know,
16 was a customer's account correct, was a house account correct.
17 There was no way of knowing. The information couldn't be given
18 to us.

19 Q. And just so the record's clear, by FX do you mean foreign
20 exchange?

21 A. Yes. Sorry.

22 Q. And that is a business that Barclays does not acquire?

23 A. Correct. We did not take over the foreign exchange
24 business.

25 Q. So the difficulty was in extracting the information on the

1 futures business, which you were acquiring, from the FX
2 business, which you were not acquiring?

3 A. That's correct. Yes.

4 Q. Now with respect to options, did you testify earlier that
5 Barclays did not have a significant equity options business
6 before this transaction?

7 A. Correct, we did not.

8 Q. And the information that you received from Lehman, both
9 before and after the transaction, was it difficult for Barclays
10 to read it on its system?

11 A. Yes. I mean the information, as we went through the
12 spreadsheet earlier, did not contain all the information.
13 Plus, Barclays had no systems for doing the risk on the equity
14 options. It wasn't our business.

15 Q. And what about the Lehman system, was it able, even after
16 the closing, to give you a clear statement of information about
17 what Lehman's risk position was?

18 A. Not easily. I believe it took a fair couple of months
19 before the finance guys actually managed to establish what the
20 risk was on those option positions.

21 Q. Can I ask you to turn to tab 4 of your binder? Tab 4 is
22 BCI Exhibit 290, which is in evidence, which I believe was
23 shown last week to Stephen King in his testimony.

24 It's an e-mail from Stephen King to you, Liz James in
25 futures sales, as well as many of your colleagues in the

1 futures sale, dated Monday, September 22nd at 19:38 GMT, which
2 I believe is about 3:38 in the afternoon New York time. Do you
3 see that?

4 A. Yes, I do.

5 Q. And in that e-mail -- so this is after the closing, is
6 that right?

7 A. Yes, it is.

8 Q. In that e-mail he writes at the top, "It is clear that
9 LB," would you have understood that to be Lehman Brothers?

10 A. Yes, I would.

11 Q. He writes, "It is clear that LB has absolutely no idea
12 what it's OCC risk position is. We know it is between two
13 billion short and four billion long. They do not know what has
14 been booked to what entity. We cannot see, we are now four
15 days into making zero progress on this with them."

16 Is that consistent with your recollection of the
17 difficulties Barclays had understanding the risks it had taken
18 over with respect to the Lehman OCC positions?

19 A. Yes. That's exactly my understanding.

20 Q. And when he says in there that they do not know what has
21 been booked to what entity, do you have an understanding of
22 what that means? Why that's relevant?

23 A. It's relevant because we now know that a lot of the
24 positions in the customer account at the OCC were actually
25 affiliate positions, they weren't customer positions. And

1 because they were affiliates Barclays was actually liable for
2 all of those positions too, because of the state of the
3 affiliates at that time.

4 Q. So let me make sure I understand that. For customers --
5 for any position in any of the accounts Barclays acquired,
6 Barclays had an obligation to fulfill the obligations on those
7 positions, is that right?

8 A. Yes, they did.

9 Q. So if the positions were out of the money did Barclays
10 have to satisfy margin calls or any other liability associated
11 with those positions, even though those positions belonged to
12 customers?

13 A. Yes, you do.

14 Q. And in the normal practice Barclays or the broker would
15 turn to the customers to obtain more margin or more money to
16 cover the liability on the position, is that right?

17 A. Yeah, that's normal practice.

18 Q. What happens if the customer is bankrupt?

19 A. Then it means that you are now responsible and liable for
20 those positions.

21 Q. And at the time of this transaction was there a general
22 concern that there could be credit risks across all customers?

23 A. Yes there was because we had no idea who their customers
24 were.

25 Q. Was that concern especially pronounced for customers who

1 were Lehman affiliates?

2 A. Yes, very much so.

3 Q. And why is that?

4 A. Because most of the Lehman affiliates were in trouble and
5 bankrupt, exactly the same as LBI, LBIE were.

6 Q. Now after the closing you said it took months to get some
7 of the information on the futures accounts and the options
8 accounts, you were saying. Once Barclays finally did get all
9 the information did Barclays have any -- incur any costs or
10 liabilities associated with, to begin with, the futures
11 accounts it had acquired?

12 A. Yes, we did. A fair amount of costs.

13 Q. You had settlement obligations with respect to all those
14 futures accounts, is that right?

15 A. We had settlement obligation to the exchange, just to give
16 you a full list, you've got the settlement obligation, there
17 were customers' accounts that were in deficit so you don't know
18 for definite whether we're going to get that money.

19 Lehman had actually also taken all of the currency that
20 was owned by any of the customer and converted it to U.S.
21 dollars. So when we actually took over we were only given U.S.
22 dollars. So we then had an FX exposure, a foreign exchange
23 exposure, to actually put all the money from U.S. dollars back
24 into the underlying currency to give it to the customers. And
25 we actually still have amounts outstanding now that we need to

1 deal with.

2 Q. And do you remember approximately how much that exposure
3 has been?

4 A. I think we're now up to around sixty million dollars.

5 Q. Were there also costs incurred with respect to liquidating
6 house accounts that included customer positions?

7 A. Yes. In London, the London clearing house who looks after
8 the LIFE exchange, which is the London International Financial
9 Futures Exchange, Lehman -- LBIE had comingled some of the
10 customer positions with the house positions and the LCH, the
11 clearing house, actually sold off LBIE's house positions
12 because they were in default and weren't able to pay and
13 unfortunately it meant those customer positions were sold off
14 too. We, as Barclays, actually made the customer whole to the
15 tune of twenty million sterling.

16 Q. On the options side, are you aware, personally, of what
17 happened on the Lehman house accounts at the OCC and whether
18 they went up or down in value after the closing?

19 A. I am aware that they went down to the tune of roughly 700
20 million dollars.

21 Q. During the months after the closing, did you also work
22 with the trustee to try to identify all of the futures accounts
23 and the margin deposits in those accounts?

24 A. Yes, we did and the trustee was very helpful at the
25 beginning.

1 Q. And the trustee's representatives worked directly with you
2 and your colleagues?

3 A. Yes, they did. Most of the communication was done via a
4 designated person within Lehman.

5 Q. And they helped you track down these various accounts that
6 are overseas?

7 A. Yes, and they actually produced the letters giving those
8 accounts authority to transfer the positions and collateral to
9 us.

10 Q. At some point did the trustee change his position and did
11 you learn that the trustee was taking the position that
12 Lehman -- that Barclays was not entitled to any of the margin?

13 A. That's correct. They did. They stopped.

14 Q. But that was many months after the closing?

15 A. It was many months. Yeah.

16 Q. And is it your understanding that Barclays is currently
17 owed additional collateral that was posted in these exchange
18 traded derivatives accounts?

19 A. Yes, they are.

20 Q. I'd just briefly like to show the work you've done on that
21 which is at tab 12 of the binder, which is a declaration you
22 gave in this case marked as BCI Exhibit 353 and which is in
23 evidence. And do you recall giving this declaration?

24 A. Yes, I do.

25 Q. And attached to it are a series of three exhibits listing

1 undelivered margin related to the futures accounts. Did you
2 create those schedules?

3 A. Yes, I did.

4 Q. I'd like to turn your attention first to Exhibit 1.

5 Exhibit 1 is titled "Undelivered Margin from Proprietary

6 Futures Account Valued as of Account Closing." It shows a

7 total of 457.2 million dollars. Do you see that?

8 A. Yes, I do.

9 Q. And can you explain what that is and how you prepared it?

10 A. This is the balances on the brokers accounts, third party

11 and affiliates, for the positions that LBI held in their house

12 accounts after they have actually been closed out. So i.e.

13 they're no longer long or short, they have a flat position and

14 this is the resulting amounts that were sitting on those

15 accounts.

16 Q. Those resulted after close outs that took place after the

17 Barclays acquisition?

18 A. Correct. They did.

19 Q. And some of the amounts are held in cash, some of them in

20 T-bills, some of them in other collateral, is that what the

21 column type indicates?

22 A. Correct. It does.

23 Q. Regardless of whether it's T-bills, cash or other types of

24 collateral, is it your understanding that these balances all

25 represent assets that were held to secure obligations with

1 respect to exchange traded derivatives?

2 A. Yes, they are. And just to clarify, the reason that some
3 of them are held in cash is because some of the exchanges
4 actually won't take collateral. The best example of that is
5 actually Korea.

6 Q. They require cash?

7 A. They require cash.

8 Q. And that cash is pledged to secure exchange traded
9 derivative obligations?

10 A. Yes, it is and you actually -- with Korea you actually
11 have to do what we call prefunding. So prior to trading you
12 have to have the money in place.

13 Q. On the left-hand column it says broker custodian and lists
14 a number of different custodians, including several Lehman
15 affiliates. Do you see that?

16 A. Yes, I do.

17 Q. Are these examples of where LBI traded exchange traded
18 derivatives through an intermediate clearing member?

19 A. That's correct, yes.

20 Q. So these brokers or custodians would presumably be
21 clearing members on the respected exchanges?

22 A. That's right. Yeah.

23 Q. And with respect to the amounts deposited at the Lehman
24 affiliates, is there a collection risk with respect to those?

25 A. Yes, there is. Very much so because I believe all of

1 those entities are actually in bankruptcy too.

2 Q. Exhibit 2 of your declaration lists customer collateral
3 delivered to date, valued as of September 19, 2008. This has
4 been -- then the total at the bottom is 2.2 billion, do you see
5 that?

6 A. Yes, I do.

7 Q. And did you prepare this chart?

8 A. Yes, I did.

9 Q. And what does it show?

10 A. It shows all of the money market funds and collateral that
11 we actually received into Barclays, with help from the trustee.

12 Q. The trustee assisted you in gathering this information?

13 A. It assisted us in acquiring this from the respective money
14 market accounts and the third party brokers.

15 Q. So the trustee approved the transfer of all this money?

16 A. Yes, they did.

17 Q. And this margin is what you were describing earlier as the
18 stuff in the customer seg and security accounts?

19 A. Yes, this is all customer money.

20 Q. And it may include both amounts up to the seg and secured
21 amount and proprietary amounts above it?

22 A. Yes.

23 Q. All held to protect customers?

24 A. It's all held to protect the customers, correct.

25 Q. Exhibit 3 is entitled "Customers Futures Collateral

1 Undelivered to Date," do you see that?

2 A. Yes, I do.

3 Q. And it has a total of 488.6 million, do you see that?

4 A. Yes, I do.

5 Q. Did you prepare this chart?

6 A. Yes, I did.

7 Q. And can you explain what it shows?

8 A. At the time of my declaration this is the amount that was
9 outstanding from the foreign brokers, the reserve money market
10 fund and the Lehman affiliates for customers' collateral that
11 Barclays has not received. We have, since this date, received
12 a very small portion of the reserve primary fund.

13 Q. Is that from the reserve primary fund?

14 A. Yeah, it is.

15 Q. Is the majority of the 488 million held with Lehman
16 affiliates?

17 A. Yes, it is.

18 Q. Can you show the Court which portion?

19 A. It's actually the one that says total not received NEHI
20 entities, the second one up from the one you've got
21 highlighted, the 289 -- 239 --

22 Q. The 289 million is with Lehman affiliates?

23 A. Yes, it is.

24 Q. And the ninety-five million is with Lehman affiliates?

25 A. Yes, it is.

1 Q. So if you combine those and get to something on the order
2 of 380 plus million, that total is held with Lehman affiliates?

3 A. Yes, it is.

4 Q. And this is valued as of what date? As of September 19th?

5 A. Yes.

6 Q. So the values may have changed but does this represent
7 margin deposits held to secure exchange traded derivatives that
8 you understand Barclays is demanding in this case?

9 A. Yes, I do.

10 Q. And is the same true of what is shown on Exhibit 1?

11 A. Yes, it is.

12 Q. And that relates to the futures business. Do you
13 understand that there is also undelivered margin assets with
14 respect to options?

15 A. Yes. I have been told there is.

16 Q. Now I asked you earlier whether you were generally aware
17 that after Barclays got all the information regarding all the
18 futures accounts, all the options accounts, the positions and
19 the margin, that under its accounting there was some net value
20 there on day one and you are generally aware of that?

21 A. Yes, I am.

22 Q. And I'll represent to you that that amount is somewhere
23 between two to three billion dollars. Based upon your
24 experience in the industry and your experience working on this
25 transaction did you expect, at the time, in September 2008,

1 that if Barclays did not acquire the Lehman exchange traded
2 derivative accounts, that the exchanges and clearing
3 corporations would then seize control of those accounts and
4 liquidate the assets in those accounts in a fire sale?

5 A. Yes. I am very much aware that's what they do. Exactly
6 the same as what the CME did and also what the LCH did in
7 London.

8 Q. So you know for a fact it happened with respect to the
9 CME?

10 A. (No audible response).

11 Q. Yes?

12 A. Yes.

13 Q. And was it your expectation that if there was no sale it
14 would have happened with the other clearing corporations and
15 exchanges?

16 A. Yes, it would.

17 Q. Based upon your experience in the industry and that
18 testimony and your experience that week, do you therefore
19 believe that the net value that Barclays identified under its
20 accounting, with respect to all of these Lehman exchange traded
21 derivative accounts, would have been available to the Lehman
22 estate in a liquidation had there been no sale to Barclays?

23 A. No, not all. It would all have been gone plus more.

24 Q. What do you mean by plus more?

25 A. The -- for an exchange to go in and close out a position

1 and certainly when we're looking at the OCC equity options,
2 it's a huge position. The OCC doesn't have traders that are
3 used to trading in those markets so they would have literally
4 gone in and dumped all of the positions in one go, which means
5 you're now at a fire sale. The market is going to go through
6 the floor in everything you're trading. So your margin will
7 go. I'm pretty sure they would have cashed in the LOCs, you're
8 then into your default fund, you're then into other clearing
9 members. And you've got to remember these were extremely
10 volatile markets.

11 MR. HUME: Your Honor, I have no more questions.

12 MR. MAGUIRE: May I be excused for one moment, Your
13 Honor? I'll be right back.

14 THE COURT: Absolutely.

15 (Pause)

16 THE COURT: Mr. Maguire, if your examination is likely
17 to be lengthy we might take a morning break at this time. If
18 not, we'll take the break after your examination.

19 MR. MAGUIRE: I would anticipate about half an hour,
20 maybe forty-five minutes, Your Honor.

21 THE COURT: Why don't we take a morning break till 11
22 o'clock?

23 (Recess from 10:50 a.m. until 11:05 a.m.)

24 THE COURT: Be seated, please. Mr. Maguire, please
25 proceed.

1 MR. MAGUIRE: If I may approach, Your Honor?

2 THE COURT: Surely.

3 (Pause)

4 THE COURT: Thank you.

5 THE WITNESS: Thank you.

6 CROSS EXAMINATION

7 BY MR. MAGUIRE:

8 Q. Now Ms. James, sorry, Bill Maguire for the SIPA trustee.

9 A. Hi.

10 Q. You were not involved in any negotiations for the asset
11 purchase agreement?

12 A. No, I was not.

13 Q. You're not suggesting that you participated in any
14 negotiations or discussions concerning the negotiation of this
15 sale?

16 A. No, I was not.

17 Q. And indeed you have no knowledge of those discussions?

18 A. No.

19 Q. And the people that you met at Lehman, they were not
20 involved in the discussions or negotiations concerning the sale
21 to Barclays?

22 A. No, they were not. As far as I'm aware they were not.
23 I'm sorry.

24 Q. The people that you mentioned; Jeff Jennings and Ron
25 Filler and Donna Moore and the other names, as far as you were

1 aware those people were not in any way involved in or privy to
2 the negotiations concerning this sale?

3 A. Correct.

4 Q. Now if you turn to the small binder that you have before
5 you, you'll see a copy of a document that you testified earlier
6 to Mr. Hume and that's your declaration and I believe it's at
7 tab 5.

8 A. Yeah.

9 Q. If you turn, Ms. James, to page 4 of that declaration
10 you'll see you have a paragraph 14 that starts "The futures
11 customers," do you see that?

12 A. Yes, I do.

13 Q. In your direct testimony, as I understand it, you were
14 careful to distinguish between the options business and the
15 futures business of Lehman, right?

16 A. Yes.

17 Q. And this specifically relates, this paragraph 14, to the
18 futures business, right?

19 A. Yes, it does.

20 Q. And you're referring here to customers, the futures
21 customers?

22 A. Yes, I am.

23 Q. And it's true, is it not, that the futures customers of
24 Lehman had provided -- had given money to Lehman to support
25 their derivatives training?

1 A. And bills, government securities.

2 Q. Right. And you say in paragraph 14 that the futures
3 customers, and that's Lehman's futures customers, right?

4 A. Yes.

5 Q. "Had deposited collateral, including initial margin, with
6 LBI prior to the closing to secure their futures trading
7 activity."

8 A. Yes.

9 Q. Right. "LBI maintains this collateral, along with
10 additional collateral that constituted LBI's own property."

11 A. Yeah.

12 Q. So there were two things in the futures customers'
13 accounts. There was the customer money, the customer property,
14 and then there was additional money that Lehman put in, right?

15 A. Correct. The buffer as we call it.

16 Q. Now you note in the next paragraph, in the final sentence
17 -- actually, it starts off -- paragraph 15 starts off "Barclays
18 took over LBI's liabilities to the LBI futures customers in the
19 amount of any collateral those customers had posted prior to
20 the closing to secure their futures trading activity and it's
21 since complied with its obligations to the LBI futures
22 customers in this regard." Do you see that?

23 A. Yes, I do.

24 Q. Now you go on to say, "Although to my knowledge Barclays
25 was not aware of the total amount of these liabilities at

1 closing, I understand that Barclays has since determined that
2 the total amount of such liabilities, as of that time, was
3 approximately two billion dollars."

4 A. Yup.

5 Q. Now that basically is saying that as of the time of the
6 closing there was two billion dollars of customer property that
7 had been deposited with Lehman in respect of its futures
8 business?

9 A. No, this is saying that it's two billion dollars that is
10 being paid back to the customers.

11 Q. That's owed to customers?

12 A. Yes.

13 Q. That's what the business owes the customers?

14 A. Correct. Yes.

15 Q. All right. And in respect of that the trustee transferred
16 property to Barclays, isn't that right?

17 A. Correct. It transferred everything in the seg and secured
18 accounts, normal practice.

19 Q. And in fact the total amount of the transfers, you say,
20 was not two billion dollars but over two billion dollars?

21 A. Correct.

22 Q. In fact it was something over 2.2 billion dollars that the
23 trustee transferred to Barclays?

24 A. That's right, because of the buffer that is held to
25 protect the seg and secured.

1 Q. And when you say the buffer, now what you're talking about
2 is not the property that's owed to customers, you're talking
3 about property that actually is proprietary Lehman owned
4 property that Lehman put into those customer accounts as a
5 buffer?

6 A. That is correct because that is normal practice in the
7 futures business.

8 Q. And I think you testified on direct that the trustee
9 changed his position and are taking the position that Barclays
10 was not entitled to any margin. You're not suggesting that the
11 trustee ever took the position that Barclays was not entitled
12 to customer margin that customers had put up or that was owed
13 to customers? You're not suggesting the trustee ever changed
14 his position on that?

15 A. Can you say that again? Sorry.

16 Q. Yes. I want to ask you about the trustee's position, it
17 has been very consistent with respect to customer property,
18 isn't that right?

19 A. Yes.

20 Q. So there was two billion dollars that we now know was owed
21 to customers at the closing?

22 A. Yes.

23 Q. And the trustee has transferred; it turns out now, not
24 only two billion dollars but 2.2 billion dollars, right?

25 A. Correct, because we were taking over the futures business.

1 Q. And Barclays is not satisfied with the 2.2 billion dollars
2 because you say you were taking over the futures business and
3 you should get the entire buffer?

4 A. Because that is normal. When you take over a futures
5 business you take everything in the seg and secured accounts to
6 insure you can satisfy all the requirements back to the
7 customers. Plus you have to copy -- you have to cover any
8 costs that are involved.

9 Q. So it's not sufficient, from Barclay's position, for the
10 trustee to provide, to transfer to Barclays, enough money to
11 pay in full all of the liabilities to customers. It's Barclays
12 position that the trustee also has to transfer hundreds of
13 millions of dollars of Lehman property as well, which was, as
14 you said, a buffer in those accounts?

15 A. The trustee should -- as -- when you acquire a futures
16 business, when you take over a futures business normal practice
17 is you take everything in the customer's seg and secured
18 accounts.

19 Q. So you're saying the additional hundreds of millions of
20 dollars of Lehman proprietary property in those accounts should
21 be transferred to Barclays?

22 A. For running the business, yes. But you have to remember
23 that at this time of the closing we had no idea what these
24 numbers were.

25 Q. And you now know that it's some hundreds of millions of

1 dollars?

2 A. I know the numbers that you're quoting, yes.

3 Q. Now if you turn to tab 4 in your binder you'll see
4 Barclays Exhibit 333 and that's an e-mail from Gary Romain is?

5 A. Yes, I am.

6 Q. And you'll see there a number of other finance people;
7 Barclays finance people, on this exchange. Do you see that?

8 A. Yes, I do.

9 Q. Now if you turn in, five pages into the document, to the
10 document that has a Bates number at the bottom 110001.

11 A. Okay.

12 Q. You'll see an e-mail there from Lee Bowel (ph.) at
13 Barclays Finance, London, right?

14 A. Yes.

15 Q. And that's to a number of people at Barclays finance,
16 right?

17 A. I believe so. Yes.

18 Q. And the subject is futures?

19 A. Yes.

20 Q. And if you scroll down under background, you'll see this
21 e-mail which is dated mid-October of 2008. Under Background it
22 says, "Barclays Capital took on the futures customer business
23 from 22nd September, which included taking on all balances
24 related to client activity." Do you see that?

25 A. Yes, I do.

1 Q. And if you go down five more lines you'll see Lehman did
2 provide excess cash to this business to insure there was always
3 sufficient cash to meet margin calls, etcetera. The business
4 usually carried at least 800 million dollars of assets in
5 addition to the customer liabilities, however this figure
6 fluctuated daily." Do you see that?

7 A. Yes, I do.

8 Q. And that is consistent with your understanding, is it not?

9 A. Correct. It is. But can I just clarify something? The
10 reason it's that high is based on -- your buffer is based on
11 how much money you're holding for customers.

12 Q. I understand. Now you referred us to a couple of exhibits
13 to your declaration and that was back again at tab 5 of the
14 small binder you have in front of you. And if you turn to
15 Exhibit 3, that was entitled customer's future collateral
16 undelivered to date, valued as of September 19, 2008, do you
17 see that?

18 A. Yes, I do.

19 Q. And you said in your direct that that was valued as of
20 September 19, 2008, right?

21 A. Yes.

22 Q. That's not in fact the case, isn't that right?

23 A. Is this the one that we actually mended the date in the
24 declaration that I did?

25 Q. Yeah, this is not in fact valued as of September 19, 2008.

1 That's not a correct statement, isn't that right?

2 A. I would have to check my declaration because I believe we
3 did clarify it.

4 Q. If you turn to the first tab of your binder, I believe
5 you'll find a copy of your deposition transcript.

6 A. Sorry, I'm muddled the two off.

7 Q. Sorry?

8 A. I muddled up declaration and deposition, I'm sorry.

9 Q. Okay. Are you with me on your deposition transcript?

10 A. Yes.

11 Q. And if you look at page 159 and reading at line 16 you'll
12 see you were asked the question:

13 "Q. I think that is all I have for that exhibit right now. If
14 you can turn to Exhibit 3, please, this is Exhibit 3 to your
15 deposition."

16 You're not the only one who's confused.

17 "It is entitled customers future collateral undelivered to
18 date, valued as of September 19, 2008.

19 "A. Yes.

20 "Q. Did you create Exhibit 3, Ms. James?

21 "A. Yes.

22 "Q. How did you go about creating Exhibit 3?"

23 And you answer:

24 "A. We took the same information that I took from operations
25 and what were the money market funds we had not received,

1 what's the foreign broker's money that was still sitting in the
2 brokers' statements we had not received and what was the money
3 in the Lehman entity broker statements that we had not received
4 for the customer designated accounts.

5 "Q. I don't think I asked you this but if I did I apologize.
6 Where did you get the foreign broker statements that you used
7 to compile this information?

8 "A. From the operations team.

9 "Q. Now there's a clarifying question

10 "A. No.

11 "Q. The clarifying question is, if I could ask a clarifying
12 question, is the title correct on this?

13 "A. No. It's January as well. Sorry, because they, Exhibit 2
14 and Exhibit 3 were done at the same time.

15 "Q. Then I have -- thanks for that, Trish, the same set of
16 question that I just went through with Exhibit 2, do the values
17 that are reflected on Exhibit 3 of 488 million or so, would
18 they change if you were to recalculate this with the valuation
19 as of September 19, 2008?

20 "A. Yes.

21 "Q. Would it be up or down?

22 "A. I don't know."

23 Those were the questions you were asked and that was the
24 testimony that you provided, isn't that right?

25 A. Correct. It is.

1 Q. Now keeping with our split of the Lehmans derivatives
2 business into options on the one hand and futures on the other,
3 I'd like to ask you a few questions focusing specifically now
4 on the futures business, okay?

5 A. Okay.

6 Q. Are you with me?

7 A. Yup.

8 Q. You had some discussions, you told us, on the Monday and
9 then, I believe on the Thursday, right, with some people --
10 some folks at Lehman?

11 A. Correct. Yes.

12 Q. And that was concerning the futures business, right?

13 A. Yes, it was.

14 Q. And the risk that you were concerned with at that time,
15 the key risk, was that in transferring the business some of the
16 clients might not come over, right?

17 A. That's not the only key risk, because your other risks are
18 were they actually segged correctly. Were they secured
19 correctly? Were the customers actually fully paid up? There's
20 a bunch of risks involved. It's not just were they coming to
21 Barclays.

22 Q. Let's take the loss of clients. If you could turn to tab
23 6 of your small binder, and that is Movant's Trial Exhibit 506.
24 You see that?

25 A. Yes, I do.

1 Q. And that's an e-mail from Tuesday, September 16, right?

2 A. Yes.

3 Q. And you'll see Mr. Stack is copied on that, and this
4 includes a memo that covers the Monday meeting, does it not?

5 A. Yes, it does.

6 Q. If you turn to that memo, on the second page of the
7 exhibit, you'll see at the bottom key risk. All right?

8 A. Yes.

9 Q. And there's only one key risk, right?

10 A. Correct.

11 Q. And that's loss of key clients due to inability to execute
12 an expedient transaction, right?

13 A. I'm not quite sure why there's only one key risk, but I
14 didn't write it.

15 Q. Well, the other risk you just mentioned to us about the
16 customers, the risk there is that you're going to get in
17 trouble because a customer is going to default, right?

18 A. Yes.

19 Q. The customer is creditworthy and takes a flier on some
20 futures and loses a bucket load of money. That's not really
21 your problem. It's the customer's problem, unless the customer
22 is not creditworthy or unless the customer defaults, right?

23 A. Well, it's the -- it is my issue if the customer can't
24 pay.

25 Q. That's exactly right. If there's a customer default, are

1 the customers not creditworthy, right?

2 A. Correct.

3 Q. That's the key risk. And the risk here, the way you deal
4 with that risk is by making sure that there are sufficient
5 funds in the seg and secured accounts, right?

6 A. But the only way you know that is by looking, is taking
7 all the assets and liabilities, which is not on here, so I
8 don't know, and we didn't know, whether Lehman's was fully
9 segged and secured prior to the closing. That is a key risk
10 and should have been on this document. As I said, I didn't
11 write it.

12 Q. I know you made a major point of this on your direct
13 testimony, that you didn't know what customers were in deficit.
14 You didn't know what the risk was. You didn't know what you
15 were walking into, because you didn't know whether there were
16 sufficient assets in the SEG and secured accounts, right?

17 A. Correct.

18 Q. In fact, that's not what you told the United States
19 government, though, is it?

20 A. I'm sorry?

21 Q. Didn't Barclays tell, specifically tell, the United States
22 government that there were sufficient assets in the SEG and
23 secured accounts?

24 A. I have no idea what Barclays told the United States
25 government.

1 Q. Well, maybe you could turn, please, to tab 3 of your
2 binder, and you'll see an e-mail that was sent Friday,
3 September 19 from Kenneth Raisler at Sullivan & Cromwell to a
4 number of people, including you and Tim Stack. You see that?

5 A. Yes, I do.

6 Q. And the subject of this is Barclays letter, and it
7 attaches the Friday 19th Barclays letter, right?

8 A. Yup.

9 Q. It says "This is the CFTC approval letter we were
10 expecting", right?

11 A. Yup.

12 Q. And that was a letter from the United States Commodity
13 Futures Trading Commission giving Barclays an approval that
14 Barclays had requested, right?

15 A. Yes.

16 Q. Now, if you turn to the second page of that approval
17 letter, page 2 of 3, you see that?

18 A. Yup.

19 Q. And if you go to the second full paragraph that starts
20 "You request relief for three categories of accounts". You see
21 that?

22 A. Yup.

23 Q. The second sentence there says "In your letter". You
24 understand that that's a reference to Barclays' letter?

25 A. Yeah. I have no idea what the Barclays -- is this the

1 Barclays' letter? Sorry.

2 Q. You see that this is a letter. If you go back to the
3 first page you'll see this is a letter addressed to Kenneth
4 Raisler.

5 A. Yup.

6 Q. You understood that Kenneth Raisler was working with you.
7 He's a lawyer at Sullivan & Cromwell, and he's --

8 A. Yes.

9 Q. -- representing Barclays.

10 A. Yes. I knew who Ken --

11 Q. And this is a response. This letter on page 1 says "This
12 is in response to your letter dated September 19, 2008".

13 A. Okay. But do we have a copy of the Barclays' letter?

14 Q. Absolutely.

15 A. Sorry.

16 Q. We'll get to that. So if you turn now to the second page
17 you'll see that Mr. Lukken, the acting director of the
18 Commodity Futures Trading Commission, says "in your letter",
19 referring to Mr. Raisler, "in your letter you state that you",
20 you understand he's referring to Mr. Raisler, "you state that
21 you, quote, 'understand that LBI has sufficient segregated and
22 secured amount funds as well as sufficient regulatory capital
23 pursuant to the provisions of the Commodity Exchange Act and
24 the Commission's regulations thereunder'". So at the time that
25 the Commodity Futures Trading Commission gave this approval to

1 Barclays it understood that it had a representation from
2 Barclays that LBI had sufficient segregated and secured funds,
3 right?

4 A. Which is normal practice, because if they didn't have they
5 would have been in trouble with the CFTC, because they would
6 have been underseg and secured.

7 Q. Barclays had to represent that there was sufficient seg
8 and secured or it wouldn't have gotten approval from the CFTC,
9 right?

10 A. Which is correct. They have to be. If not, Lehman's
11 would have been in violation at the CFTC.

12 Q. And, in fact, if you turn to tab 2 of your binder you'll
13 see an e-mail from David Gilberg, same date, Friday, September
14 19, subject "Barclays Capital Lehman Brothers", and it starts
15 "Attached is a revised version of the letter we sent to you
16 earlier today, along with a blackline". You see that? You see
17 the e-mail?

18 A. Yes, I do. Sorry.

19 Q. And, then, if you turn to the attachment you'll see the
20 attachment is a letter from Sullivan & Cromwell, dated
21 September 19, 2008, addressed to Ananda Radhakrishnan,
22 director, Division of Clearing & Intermediary Oversight at the
23 Commodity Futures Trading Commission. You see that?

24 A. Yes, I do.

25 Q. And if you turn to the second page, end of the first full

1 paragraph, you'll see a sentence there that says, quote, "We
2 understand that LBI has sufficient segregated and secured
3 amount funds as well as sufficient regulatory capital pursuant
4 to the provisions of the Commodity Exchange Act and the
5 Commission's regulations thereunder", right?

6 A. Yes.

7 Q. So Barclays felt comfortable making that representation to
8 the government on Friday, September 19th. Isn't that correct?

9 A. Well, what it's saying is that we believe they are. We
10 don't know that for definite, because we actually haven't
11 looked at what they have in their accounts. But based on the
12 rules of the CFTC that if, at any time, you go underseg or
13 secured you are supposed to report yourself to the CFTC you
14 assume that they are.

15 Q. And Barclays made that representation?

16 A. Yes.

17 Q. Now, we've been talking about the customer business, and
18 you had mentioned the CME, I believe. That's the Chicago
19 Mercantile Exchange?

20 A. Yes, it is.

21 Q. The Chicago Mercantile Exchange asked Barclays to
22 guarantee customer positions at the CME for the opening of
23 business on Monday morning. Isn't that right?

24 A. Correct. They did.

25 Q. And that was important to do, because if the exchange was

1 nervous there was a risk that customer positions could be
2 closed out unless Barclays stepped up and gave that guarantee?

3 A. The concern was that if the approval to transfer the
4 business from Barclays -- from Lehman to Barclays did not go
5 through Lehman's would not be able to satisfy that call on the
6 Monday morning, and the CME would have to have put customers
7 into deficit, which they did not want to do.

8 Q. So to prevent that Barclays stepped up and gave a
9 guarantee to the CME of all of the customer margin requirements
10 as of Monday morning.

11 A. For the Monday morning only.

12 Q. Right.

13 A. Not for any other. Just for the Monday morning.

14 Q. And Barclays made that guarantee?

15 A. Yes, they did.

16 Q. Now, we've been talking all about the customer property
17 and the customer's business, that part of the futures business
18 up to now, right?

19 A. Yes.

20 Q. I believe you testified a little bit earlier about how you
21 had discussions with Lehman concerning not just customer margin
22 but house margin. You recall that testimony?

23 A. Yes, I do.

24 Q. And that was all in connection with house, or proprietary
25 positions that Lehman had?

1 A. Correct.

2 Q. Now, isn't it a fact, Ms. James, that you were not even
3 aware that Lehman had any firm or proprietary futures trading?
4 That was information that did not even come to your attention
5 until after the closing.

6 A. No, we were actually given some of the information on the
7 Sunday, but it -- one of the question -- one of the things that
8 you do, which is what was in the spreadsheet that we put
9 together -- is to establish is there any house positions?

10 Q. I understand you're now disagreeing with that, but if you
11 could turn, please, to your deposition transcript at page 46,
12 starting at line 17, you testified at your deposition at
13 follows:

14 "Q. Did you ever come to learn that Lehman had house positions
15 on futures?

16 "A. There I came to learn after the fact, so after the 22nd,
17 that there were positions for their affiliates that were
18 trading that were sitting in the house accounts for futures and
19 for their equity options. I had found out that they had house
20 equity options and then they had affiliates trading and their
21 positions were actually in customer and house. But that was
22 after -- that was after the 22nd. I didn't know prior."

23 You were asked that question and you gave that answer, did
24 you not?

25 A. Yes, I did give that answer.

1 Q. In fact, you did not even ask for any information from
2 anyone at Lehman concerning the firm's proprietary future
3 trading positions. Isn't that right?

4 A. That's not correct. If you actually look at the
5 spreadsheet that we spoke about earlier in my testimony it
6 actually is on there as house and customer.

7 Q. If you turn, please, to page 78 of your deposition
8 transcript, starting at line 12, you were asked the following
9 question and gave the following answer:

10 "Q. Do you know whether or not Barclays asked Lehman prior to
11 the closing for information about its proprietary future
12 trades?

13 "A. I don't know."

14 You were asked that question and you gave that answer.

15 Q. Now, I'd like to switch from the futures piece of the
16 business that we've been talking about to that other piece of
17 the business, which is the options side of the business, okay?

18 A. Yup.

19 Q. Can you keep that straight?

20 A. Yes.

21 Q. You are not an expert on options, right?

22 A. I am not an expert on equity option clearing, no.

23 Q. In fact, the information that you gave at your deposition
24 on the whole subject of options you got from either Mr.
25 Dziemian or Mr. Jones. Isn't that right?

1 A. Correct. Yes, I did.

2 Q. Now, you were not a member of the options team.

3 A. Nope.

4 Q. And you've told us earlier that Barclays was not an equity
5 option house, right?

6 A. Correct.

7 Q. It didn't have the risk systems for valuing those
8 positions, right?

9 A. The proprietary trading, correct.

10 Q. You did look at a document for Mr. Hume, and you made a
11 point that it was missing certain information, and you
12 specified lots and house positions, right?

13 A. Correct.

14 Q. But you don't know if Barclays ever asked Lehman for that
15 information.

16 A. I don't believe so, no. I don't know.

17 Q. You told us on your direct examination that Barclays lost
18 700 million dollars closing out positions, right?

19 A. Yes.

20 Q. Now, you didn't mean to suggest that Barclays didn't
21 protect itself against those losses by hedging?

22 A. I'm not sure.

23 Q. The number that you gave, the 700 million dollar losses,
24 you're not suggesting that Barclays lost 700 million dollars
25 after hedging was taken into account?

1 A. I don't know.

2 Q. You mentioned a number of other deals, and you talked
3 about normal practice, and I don't know if I got all the deals
4 down, but one, I think, was ABN. Was that right?

5 A. Correct, yes.

6 Q. Is that Merrill Lynch's energy futures?

7 A. Yes.

8 Q. And another was Sems?

9 A. Sem. The SemGroup. Yes.

10 Q. And was there a third?

11 A. The other one was -- hang on. ABN, it was the Nomura
12 business that ABN took over.

13 Q. The Nomura business?

14 A. ABN took over Nomura's futures business.

15 Q. Okay. Now, are you aware in connection with any of those
16 deals how they were structured? Whether there was a purchase
17 of a company or whether there was an asset purchase agreement?

18 A. I wasn't involved in the legal side, so I honestly don't
19 know.

20 Q. You didn't see the contracts?

21 A. No.

22 Q. And you don't know whether, in connection with any of
23 those, what the actual legal terms were?

24 A. No.

25 Q. You don't know whether there was an exclusion for cash in

1 any of those contracts?

2 A. No, I don't know.

3 Q. Thank you.

4 MR. MAGUIRE: I have nothing further, Your Honor.

5 THE COURT: Redirect?

6 MR. HUME: Just a few, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. HUME:

9 Q. Ms. James, you were asked some questions a moment ago by
10 Mr. Maguire about your deposition testimony, that you didn't
11 know whether Barclays asked Lehman prior to the closing about
12 its proprietary futures trades. In your deposition you said I
13 don't know. Do you recall that?

14 A. Yes, I do.

15 Q. If you turn to tab 2 of the binder I gave you and we go to
16 the same page we were looking at before it references house
17 margin and collateral at the bottom. Do you see that?

18 A. Yes.

19 Q. And does this document -- is this the spreadsheet you
20 referenced and responded to Mr. Maguire.

21 A. Yes, this is the --

22 Q. So this document is actually a spreadsheet?

23 A. Yes.

24 Q. And it reflects notes from a discussion you had with
25 Lehman on Thursday, September 18th?

1 A. Yes, it does.

2 Q. And it reflects that in that discussion there was a
3 discussion about the transfer of house margin and collateral
4 associated with the proprietary futures business?

5 A. Yes, it does.

6 Q. That's the Lehman proprietary futures business?

7 A. Yes.

8 Q. And if we go to tab 3 of the binder, on the VIX positions,
9 do you remember talking about that?

10 A. Yes, I do.

11 Q. Were those house futures positions that you were learning
12 about?

13 A. Yes, they were.

14 Q. So the night before the closing you started to learn about
15 house proprietary Lehman futures positions?

16 A. Correct.

17 Q. But you learned a lot more after the closing.

18 A. An awful lot more after the closing.

19 Q. And, so, in your deposition you said you learned it after
20 the closing. Is it more accurate after you reviewed the
21 documents you remembered that you actually learned some just
22 before the closing?

23 A. Yes.

24 Q. You were also asked about the customer seg and secured
25 account and the representation made by Mr. Raisler that he

1 understood that Lehman was in compliance. Do you recall that?

2 A. Yes, I do.

3 Q. Now, do you recall that you were told that they were in
4 compliance?

5 A. I --

6 Q. Do you recall one way or the other?

7 A. I don't -- I don't think I was told one way or the other.
8 Sorry.

9 Q. Does it make sense to you that Lehman would represent to
10 Barclays that it was in compliance?

11 A. Yes, because if you're not you have to report yourself to
12 the CFTC.

13 Q. So they represented, it would be your understanding from
14 what Mr. Maguire showed you that Lehman represented that they
15 were in compliance?

16 A. Correct.

17 Q. And had enough in their customer seg and secured accounts.

18 A. Correct. But until we, as Barclays, could get in and
19 actually take a look at them we wouldn't know for definite.

20 Q. And were you trying to get in and actually look to verify
21 and see what was there?

22 A. Yes, we were.

23 Q. Were you able to do that before the closing?

24 A. No, we were not.

25 Q. Were you also trying to see whether there might be Lehman

1 proprietary assets, what you've referred to as the buffer
2 there, to protect against downside exposure on those accounts?

3 A. The biggest thing that you're looking at when you're
4 taking over a business, you don't necessarily say what's the
5 buffer. You're looking at are we protected. Are the customers
6 protected? Do we have enough to pay the customers back?
7 That's the key piece that you're looking for.

8 Q. And Mr. Maguire said that there's a risk a customer might
9 have taken a flier on some risky position and it goes out of
10 the money. If that happens, isn't it true -- is it correct
11 that the amount in the customer seg and secured account might
12 not be enough to cover all of Barclays's risk.

13 A. That's correct. Yes.

14 Q. So even if they are in compliance there is still exposure,
15 depending on what the positions are.

16 A. Yes, there is exposure.

17 Q. You were asked about your experience in options. Mr.
18 Maguire asked you if you were an expert in options. Have you
19 worked on options as well as futures in your career?

20 A. Yes, I have.

21 Q. And are you on a number of committees at the Options
22 Clearing Corporation?

23 A. Yes, I am, and I do sit on the OCC options round table,
24 which is held four times a year.

25 Q. You were asked about whether the trustee's position with

1 respect to customers, the transfer of customer assets, has
2 changed. Do you recall that?

3 A. Sorry. Say that again.

4 Q. Mr. Maguire asked you whether you were aware of whether
5 the trustee had changed its position with respect to customer
6 assets.

7 A. Yes.

8 Q. He didn't ask you whether you believe the trustee has
9 changed his position with respect to proprietary assets. Is it
10 your understanding the trustee has changed his position with
11 respect to proprietary futures assets?

12 A. The trust --

13 MR. MAGUIRE: Foundation, Your Honor.

14 THE COURT: Well, I'm going to overrule that
15 objection. And it's a question of what her understanding is.
16 She either has an understanding or she doesn't.

17 Q. You may answer.

18 A. Oh, sorry. The trustee has not paid us or passed over the
19 collateral for the house, which I'm making an assumption means
20 that he has changed his position.

21 Q. You were asked some questions by Mr. Maguire about cash
22 posted as margin, and I just want to return briefly to Exhibit
23 963, which is tab 7 of your binder, of the binder I gave you.

24 A. Yup.

25 Q. And to the page with the spreadsheets on it attachment.

1 A. Yup.

2 Q. Now, first of all, did you prepare this document?

3 A. Yes, I did.

4 Q. And did you prepare it to summarize information received
5 from Lehman about its OCC statements?

6 A. Yes, I did.

7 MR. HUME: Now, Your Honor, this document hasn't been
8 admitted. The one thing I neglected to do is just have it
9 admitted. I don't know if there's an objection.

10 MR. MAGUIRE: No objection, Your Honor.

11 THE COURT: It's admitted.

12 (Information received from Lehman about its OCC statements was
13 hereby received as Barclays's Exhibit 963 for identification,
14 as of this date.)

15 MR. MAGUIRE: Thank you.

16 Q. Now, very briefly on the subject of cash, Ms. James, does
17 the information on this sheet show that some of the margin was
18 deposited as cash?

19 A. Yes, it does.

20 Q. Is the cash that was deposited in these house Lehman OCC
21 accounts sufficient to satisfy the margin requirement in that
22 account?

23 A. For that day just the cash?

24 Q. Yes.

25 A. No.

1 Q. If you had no cash transferred to Barclays from this
2 account would the other collateral in the account be sufficient
3 to satisfy the margin requirement?

4 A. No, it would not. And you have to remember the LOC
5 wouldn't come.

6 Q. Is it your understanding -- do you have any understanding
7 or knowledge about whether Lehman was able to withdraw any cash
8 from its OCC accounts on Friday, September 19th?

9 A. They actually were not. They made a request to the OCC to
10 actually take back money on the Friday, which the OCC actually
11 declined to allow them to do, and the reason being was because
12 we were going into an exercise and assignment weekend and the
13 OCC was concerned about the volatility and whether Lehman would
14 be capable of paying. So they actually declined any money or
15 collateral going back to Lehman on the Friday.

16 Q. Based on your understanding and your knowledge of what you
17 just said, would you have thought that Lehman had excess cash
18 in that account over that weekend that it could withdraw and
19 use?

20 A. Looking at the reports now, yes, you can see that, but at
21 the time, if the exchange is stopping you from taking it it
22 means they have a concern.

23 Q. And it means that -- was Lehman actually functionally and
24 practically able to use that cash, given that the OCC didn't
25 allow them to withdraw?

1 A. Well, they could use it to cover their OCC positions, but
2 they couldn't take it away to do anything else with it.

3 Q. No more questions. Thank you.

4 THE COURT: Anything more?

5 MR. MAGUIRE: Very briefly, Your Honor.

6 RECROSS EXAMINATION

7 BY MR. MAGUIRE:

8 Q. Just on that last point, Ms. James, about the OCC not
9 allowing cash to be withdrawn on Friday the 19th. That
10 testimony you just gave is not based on any knowledge that you
11 had at the time. Is that right?

12 A. It was given to me for my declaration.

13 Q. You learned about it much later in connection with
14 preparing for your 30(b)(60) deposition?

15 A. Correct.

16 Q. It was something that somebody told you in connection with
17 that.

18 A. That's correct, yes.

19 Q. And that's the kind of thing that you haven't seen in any
20 written document for the OCC or something that you wouldn't
21 expect the OCC to document in its records. Isn't that right?

22 A. No, I believe there's an e-mail, but I'm not sure who the
23 e-mail is from.

24 Q. If you turn, please, to page 121 of your deposition
25 transcript.

1 A. Sorry. Which book?

2 Q. That would be in the --

3 A. The little black --

4 Q. I think it's in both books, but certainly in the small
5 one. It should be right at the beginning.

6 A. Sorry.

7 Q. And, then, starting at line 8 you were asked the following
8 question.

9 "Q. Well, I'm not sure I quite understand that. I thought you
10 said there was an additional margin call made to Lehman on
11 Friday the 19th of September.

12 "A. Right. "And if you read Craig's declaration"

13 And that's a reference to Craig Jones?

14 A. Yes, it is.

15 Q. What he says is they went to withdraw money on Friday from
16 the OCC, which was a requirement above and beyond the initial
17 requirement they had there, so they chose to pull it back into
18 their normal regular bank account, I'm assuming to satisfy
19 other requirements. When they called the money back the OCC
20 said no, and the OCC said no, we are keeping that money as an
21 additional requirement. Then you were asked the following
22 question:

23 "Q. And would you expect the OCC to update their books and
24 records to reflect that?

25 " UNIDENTIFIED SPEAKER: Objection. Foundation.

1 "A. No. No, because they haven't changed anything there is
2 nothing for the OCC to reflect."

3 You were asked those questions --

4 A. Correct.

5 Q. -- and you gave those answers. Thank you.

6 MR. MAGUIRE: Nothing further.

7 A. But there isn't anything for them to change. Sorry.

8 THE COURT: You're excused, and thank you.

9 THE WITNESS: Thank you very much, Your Honor.

10 THE COURT: Do we need a little time for the video?

11 MR. SCHILLER: No, Your Honor. I think we're ready to
12 go. We do have an objection to a portion of it. I should
13 probably wait for the objection and respond. However you want
14 to proceed, Judge.

15 THE COURT: Are we going to hear the objection before
16 or after playing the video?

17 MR. MAGUIRE: It's probably easier to do it after the
18 video, because Your Honor will have seen what we're arguing
19 about.

20 MR. MAGUIRE: Let's do that.

21 MR. SCHILLER: Okay. So we offer the deposition of
22 Andrew Keller. As I said, he was a 30(b)(6) for Simpson
23 Thacher, which, along with Fox Rothschild represented the
24 estate through the preparation and finalization of the
25 clarification agreement.

1 THE COURT: Okay.

2 (Pause)

3 THE COURT: Thank you.

4 MR. SCHILLER: We're providing binders with the
5 transcript, Your Honor.

6 (Pause)

7 (Video Deposition Testimony Played)

8 "Q. Can you tell me how long you've been with Simpson Thacher?

9 "A. I started in 1983.

10 "Q. And what is your area of practice?

11 "A. Corporate finance.

12 "Q. And within corporate finance do you have any particular
13 specialty or area of practice?

14 "A. I did a combination of advising clients such as Lehman in
15 their disclosure documentation and then also do a number of
16 securities offering and had done a number of securities
17 offering as underwriter's counsel for Lehman and various other
18 investment banking clients.

19 "Q. So Simpson has done a lot of work for Lehman over the
20 years?

21 "A. Yes.

22 "Q. When did you first become involved in any way in a
23 possible transaction with Lehman and Barclays?

24 "A. That probably would have been the Thursday before what
25 unfortunately turned out to be the bankruptcy filing, when we

1 got the call to help with the potential sale of the company.

2 "Q. September 11, 2008?

3 "A. Yes.

4 "Q. And what was your individual personal involved role with
5 that process?

6 "A. They -- Lehman called us to -- at that point Lehman called
7 and said that they were talking to two potential buyers, Bank
8 of America and Barclays, and Sullivan & Cromwell had been
9 helping Lehman over the past couple of months also, and the way
10 that Lehman was going to split the work was that although
11 everybody would be involved in helping Lehman, but Sullivan &
12 Cromwell would take the principal responsibility for the BOA,
13 potential BOA transaction, and we would do the documentation
14 for the potential sale to Barclays.

15 "Q. And when you say documentation you also mean the legal
16 advice concerning the transaction too, right?

17 "A. Yes.

18 "Q. And did that have an essential draw-up change at all after
19 the bankruptcy filing by then?

20 "A. Well, we were drafting a merger agreement with Barclays
21 over that weekend, and then got the call roughly sometime mid-
22 day Sunday that the deal had died for whatever reason. And,
23 essentially, went home at that point. Sometime during the day,
24 late morning that Monday, I think we got a call from Lehman to
25 come on over to their offices, that there was now another

1 potential deal with Barclays. And we showed up there, and at
2 that point already there were, at Lehman's conference room
3 floor, Weil, Gotshal was there representing Lehman. And
4 Sullivan & Cromwell and Cleary Gottlieb representing Barclays,
5 and many people from Lehman and Barclays in many conference
6 rooms on that floor.

7 So we were called over to help, give them our knowledge of
8 the company and just help review the documents that were being
9 drafted.

10 "Q. Do you understand that you've been designated to give
11 testimony on behalf of Simpson on certain issues for them?

12 "A. Well, that's -- on behalf of the firm?

13 "Q. Yes.

14 "A. Yes.

15 "Q. And what did you do that first day, Monday?

16 "A. That Monday and Monday night we essentially would -- that
17 the process would be that, for the most part, the lawyers would
18 be in a room going over the contract. Lawyers from both sides
19 giving comments and then the contract would be done. And we
20 would wait and review the contract and more comments back and
21 forth. So it was just a typical negotiation drafting process.

22 "Q. And Simpson was involved in that drafting process of that
23 original contract?

24 "A. Yes."

25 MR. SCHILLER: Your Honor, the witness is about to be

1 asked about BCI, Exhibit 11, which is the first tab in your
2 binder. Thank you.

3 (Video Deposition Testimony Played)

4 "Q. Again, do you know the document?

5 "A. This is --

6 "Q. Let me give you a document marked. It's been previously
7 marked as 440. Do you recognize Exhibit 440?

8 "A. As I recall, this is the version that was submitted to the
9 Bankruptcy Court.

10 "Q. When you say this is the version, you're referring to the
11 second exhibit, which is a version of the original asset
12 purchase agreement that has a number of hand marks and writing
13 on it.

14 "A. Assume that matches this one.

15 "Q. Let me ask you, then, about the exhibit -- the version of
16 the original asset purchase agreement attached. Do you know
17 whose handwriting that is showing the marks on that version of
18 the agreement?

19 "A. Yes, it's Elizabeth Cooper, an associate at this point.

20 "Q. Do you know why there was no values put on these various
21 assets for any total valuation placed on the assets?

22 "A. No.

23 "Q. Do you know if that was important? I mean, was that a
24 element of the deal that certain assets be worth certain
25 amounts?

1 "A. That would -- no, I wasn't -- I wasn't part of the
2 discussions between the principals as to exactly how the deal
3 was cut, and, so, I can't say what elements of the deal were
4 important to them.

5 "Q. But, as, and since Simpson was involved in the drafting
6 out of this contract, can you explain why that it wasn't
7 necessary to try to total up the value of the assets and the
8 value of the liabilities?

9 "A. Again, my experience in the M&A world, which is, as I
10 said, a little limited, it does not strike me as unusual that
11 at least the values of these listed assets weren't broken down.
12 That, obviously, the principals would agree to, essentially,
13 how you define the business, and in an asset purchase agreement
14 lay out the assets, describe the assets that are being
15 purchased and describe the liabilities that are being assumed
16 in that key section is what it was, but to break down each, the
17 value of each item by item does not, the fact that it was not
18 broken down is not unusual.

19 "Q. Is it not necessary to do that because the deal wasn't
20 predicated on assets having certain values or liabilities on
21 certain items?

22 "A. I don't -- I don't know what -- again, I just don't know
23 how the buyer and seller approached the overall valuation of
24 the business or how they got to it. By the time we got the
25 call that seemed to have already taken place. And, with, based

1 upon the contract the conclusion on that would have been that
2 it didn't matter, nor the deal wasn't predicated on assets
3 having certain values or liabilities having certain values,
4 look, rather than Barclays was, essentially, buying the
5 business.

6 UNIDENTIFIED SPEAKER: Objection to form of question.

7 UNIDENTIFIED SPEAKER: You can answer him.

8 UNIDENTIFIED SPEAKER: Did he understand what the
9 question is?

10 "A. Well, I think, to my understanding of your question you're
11 asking how the buyer and seller, the principals, approached the
12 deal. And, again, I just wasn't part of those conversations,
13 and to assert, and, so, I don't know to what extent value of
14 particular assets was important or factored into the decision
15 of what discussions they had on it.

16 "Q. You remember yourself?

17 "A. At this point it was, just from my perspective, just
18 running through what the lawyers would go back to their
19 clients, principally Weil and Cleary Gottlieb, and say do we
20 have the description of the assets that are being transferred
21 and the liabilities that we can assume correct?

22 "Q. You're not aware of any reason to believe that there was a
23 disconnect between Simpson and the other attorneys in drafting
24 this contract in what the principals wanted, are you?

25 "A. Not that I know of.

1 "Q. And from everything you know did it appear to be a good
2 faith, arm's length, negotiating process.

3 "A. Yes.

4 "Q. At the top of page 7 you'll see there's a section (d) that
5 says "Government securities, commercial paper", and this is
6 before the changes were made where it says "Government
7 securities, commercial paper, mortgage loans, corporate debt,
8 corporate equity, exchange-traded derivatives, and collateralized
9 short-term agreements". Do you see that?

10 "A. Yes.

11 "Q. And in your handwritten changes made, including at the end
12 there is a phrase added "with a book value as of the date
13 hereof of approximately 70 billion dollars". Do you see that?

14 "A. Yes.

15 "Q. Do you know why that was added?

16 "A. No.

17 "Q. Do you know who added it?

18 "A. Well, again, the language -- the words were actually
19 written by Elizabeth Cooper, but this was as a result of part
20 of the negotiations between the two sides and agreed to.

21 "Q. And you've spoken with Ms. Cooper about this edit?

22 "A. No.

23 "Q. Do you know if anyone at Simpson had spoken with her
24 about --

25 "A. That particular edit?

1 "Q. Yes.

2 "A. Not to my knowledge.

3 "Q. Do you know who directed her to make that edit?

4 "A. Well, it would have been a markup that both sides had
5 agreed to, and, essentially, instead of giving it to the word
6 processor to type it in somebody handed it to Elizabeth to just
7 do by hand. She volunteered to do it.

8 "Q. Do you know was she at a meeting or visiting?

9 "A. She was there at the -- at the conference. At the
10 conference room floor is where everybody was negotiating the
11 agreement.

12 "Q. At 7:45?

13 "A. Yes.

14 "Q. And do you know who also from Simpson was there?

15 "A. I was, until I left that morning. John Finley was there
16 and Alvin Brown may or may not -- was at least there for part
17 of the time.

18 "Q. And do you know which side or who -- what person suggested
19 this inclusion?

20 "A. I don't know where it originated from.

21 "Q. Do you understand the inclusion to be describing some
22 subset of assets listed in Section (d)?

23 "A. Yes, I would agree that to lend description to what assets
24 were covered by (d).

25 "Q. And is it fair to say that at least one earlier version of

1 the contract did not have that language in it, that
2 description?

3 "A. That's what it looks like.

4 "Q. Do you have any knowledge of where that 70 billion dollar
5 figure came from?

6 "A. No.

7 "Q. Do you have any knowledge of what it represents?

8 "A. Well, other than reading the words represent -- for
9 Simpson it represents the book value of those long positions as
10 defined.

11 "Q. Let me ask you to turn and he -- execute a copy of the
12 original APA, to section 2.5, please. If you'd take it on to
13 review that section, please.

14 "A. Okay.

15 "Q. And do you see this section entitled "Cure amounts
16 obligates the purchaser to pay a couple of different types or
17 assume a couple different types of liability, one being cure
18 amounts for past amounts owed under the contract that they elect
19 to assume, and the other being certain ordinary course
20 amounts".

21 "A. Yes.

22 "Q. Why was there no value placed on the liability that's
23 being assumed here by the purchaser?

24 "A. My understanding was that this is typical in a bankruptcy
25 situation, and as you can, as reading this paragraph, as of the

1 day of this contract I could not tell you what the ultimate
2 obligation was going to be, because it's forward looking.

3 "Q. So it's impossible to know the amount of liability that
4 would be assumed by the purchaser?

5 "A. Impossible is a tough standard, but I would -- I do not
6 know, I mean, to put an exact dollar amount on it, probably
7 not. Could somebody knowing, having a good knowledge of the
8 business make a reasonable estimate? That I don't know.

9 "Q. Well, if it's up to the discretion of the purchaser which
10 contracts he elects to assume --

11 "A. Yes.

12 "Q. -- I mean, couldn't the purchaser elect to assume zero
13 contracts and assume zero --

14 "A. The way I understand it, yes.

15 "Q. So the actual amount of liability here could be zero?

16 "A. It is possible, yes.

17 "Q. Did you attend any of the court hearings?

18 "A. No.

19 "Q. Did anyone from Simpson attend any of the court hearings?

20 "A. Not to my knowledge.

21 "Q. You made reference to statements made to the Court. Was
22 that because you needed the transcripts from those hearings?

23 "A. Just a couple of pages that were referenced by Lori Fife
24 to those dollars amounts.

25 "Q. How did Simpson have an understanding of what was going on

1 in court? Was somebody reporting back to Simpson?

2 "A. There's not something that was being formally done. We
3 heard, you know, high level summaries. Obviously everybody was
4 interested in what was going on in court, but -- "

5 UNIDENTIFIED SPEAKER: Let me go in.

6 MR. SCHILLER: Your Honor, the witness is about to be
7 asked about Exhibit 104, minutes of a Lehman board meeting.

8 (Video Deposition Testimony Played)

9 "Q. I show you a document that's been previously marked as 49.
10 Please take a moment to read that.

11 "A. Yes.

12 "Q. Is this the board meeting that you attended --

13 "A. Yes.

14 "Q. If you would turn to page 3, please, the second paragraph
15 that reads "Mr. Roberts resumed by describing that it is a
16 condition to the transaction that a specific firm employees
17 enter into employment agreement with Barclays. He stated that
18 Mr. McGee was one of those employees, so interested firm
19 employees were involved in the transaction negotiations on
20 behalf of the firm". Can you see that?

21 "A. Yes.

22 "Q. Were you aware at this time that certain employees were
23 negotiating, acquiring contracts, certain Lehman employees that
24 were also involved with the transaction negotiations were also
25 negotiating employment transactions with Barclays?

1 "A. Yes.

2 "Q. Did that strike you as odd or inappropriate or problematic
3 in any way?

4 "A. As Mr. Roberts pointed out, it was something to point out
5 to people who presumed potential conflicts, but seeing as given
6 the circumstances, unavoidable.

7 "Q. So the board, Weil and Simpson were aware of the situation
8 with respect to what you referred to as interested firm
9 employees --

10 "A. Yes.

11 "Q. -- negotiating the transaction at the same time they were
12 also negotiating employment and bonus agreements with Barclays?

13 "A. Yes.

14 "Q. I'm going to show you a document marked as 523."

15 MR. SCHILLER: Again, Your Honor, 523 in the big --
16 Barclays Exhibit 434, the next Exhibit in book -- in front of
17 you.

18 "Q. Do you recognize this e-mail from John Finley? I'm going
19 to show you dated September 18, 2008?

20 "A. Yes.

21 "Q. And the lower e-mail, earlier in time e-mail, from Weil,
22 and attached is a draft clarification letter for discussion,
23 and, then, Mr. Finley writes back consider at what point the
24 changes will be significant enough that he would want to run
25 through the board. Do you see that?

1 "A. Yes.

2 "Q. Is it fair to say that Simpson was just giving
3 consideration to the issue of whether any changes were
4 significant enough to have to bring them back to the board?

5 "A. And from -- certainly from this e-mail I could see that
6 since changes were made -- were being made to the agreement
7 that it is something that people should consider, that as
8 John -- Simpson stated here that Weil was closer to what
9 discussions had been having with the board and the agreement,
10 was in a better position to make that judgment, at least in our
11 opinion.

12 "Q. Although Simpson did attend the board meeting on the sale
13 transaction?

14 "A. Yes. But, presumably, there were discussions with the
15 board before that that they were not so --

16 "Q. Are you aware of any determination by anyone at Simpson or
17 Weil, Gotshal prior to September 30th where any of the changes
18 that were being made to the sale transaction after September
19 16th were significant enough to require going back to either
20 the LBHI or LBI boards?

21 "A. No.

22 "Q. Let me show you a document."

23 MR. SCHILLER: Your Honor, the witness is now going to
24 be shown BCI Exhibit 530, the next tab in your book. It is a
25 draft clarification letter. He will also be shown the

1 following exhibit in your book as well, BCI Exhibit 238, a
2 further version of the clarification letter.

3 (Video Deposition Testimony Played)

4 "A. They're all marked as 524.

5 "Q. The e-mails I'll show you are not all marked as 525. On
6 525 it's sending you the latest version of the clarification
7 letter. And, then, Exhibit 524, they're being sent another,
8 more updated, version of the clarification letter showing
9 changes being made. Is that all right?

10 "A. Yes.

11 "Q. Is this consistent with your prior testimony that you
12 remain involved in the sale transaction and the negotiation
13 draft and process throughout that week?

14 "A. Yes.

15 "Q. Was it your understanding that the trustee, or
16 representatives of the trustee, were also involved in the
17 drafting of the negotiation for the clarification letter?

18 "A. It was my understanding that they were. They are. But --
19 I don't know what you mean by involved in the drafting. They
20 were not drafting.

21 "Q. Were they involved in the discussions about it?

22 UNIDENTIFIED SPEAKER: Strike that.

23 "Q. When you say there, you mean physically at Weil, Gotshal's
24 office?

25 "A. They were physically at Weil.

1 "Q. And that's where the clarification was being finalized?

2 "A. Yes, but I was not aware of any direct conversations with
3 the trustee.

4 "Q. Do you recall, generally, the parties having reached
5 agreement on Friday about changes to the deal prior to the
6 Court hearing but that then the actual drafting and
7 finalization of the document continued over the weekend?

8 "A. That would, again, our role was more that -- more of a
9 backseat. I was not aware of the direct conversations between
10 the principals. Some of that merely would come first to Weil
11 and to Cleary, and then, through them, to us.

12 "Q. But --

13 "A. So to what extent people had agreed to the deal as of a
14 particular point in time is very difficult for me to say.

15 "Q. Well, Simpson -- part of Simpson's role, I mean, wanted --
16 heard, was informed about the terms to make sure that the
17 contract document -- documents reflected the agreement of the
18 principals, correct?

19 "A. At least to the extent that we understood I think it was.
20 Before it raised questions, or just assist where we could.

21 "Q. Is it fair to say that Simpson was conscious of making
22 sure that any approvals or agreements necessary for the deal
23 were obtained?

24 "A. At least where we could think of what approvals might be
25 necessary or ask if approvals were necessary.

1 "Q. Was there ever a time when you concluded that a necessary
2 approval was not obtained?

3 "A. No.

4 "Q. And were you over at Weil that weekend --

5 "A. Both days."

6 UNIDENTIFIED SPEAKER: Let me get on.

7 MR. SCHILLER: Your Honor, the Exhibit 5, which is the
8 next tab, would be the subject of questioning next.

9 (Video Deposition Testimony Played)

10 "Q. The document that's previously been marked Exhibit 25. Do
11 you recognize that as the letter agreement or clarification
12 letter that the parties were finalizing over the weekend of
13 September 20th and September 21st?

14 "A. Yes.

15 "Q. And you received them? In addition to the revisions going
16 on over the weekend you also received a copy of the final
17 version of this at the time, correct?

18 "A. Yes.

19 "Q. The parenthetical that says -- let's see the parenthetical
20 that's in the clarification letter. (2)(c) "And any property
21 that may be held to secure obligations under such derivatives".
22 Do you understand that to be referring to collateral associated
23 with the exchange-traded derivatives?

24 "A. Yes. Yes.

25 "Q. And, now, are you referring to all collateral, whether

1 it's securities or cash or some other type of collateral?

2 UNIDENTIFIED SPEAKER: Objection.

3 "A. I would agree with the words any property referring back
4 to such derivatives, yes. Collateral for such derivatives.

5 "Q. Which would include securities and cash and any other
6 types of property?

7 "A. Any property.

8 "Q. I'm sorry. You said yes?

9 "A. I would read property to include cash.

10 "Q. Is that consistent with your reading of it at the time?

11 "A. Yes.

12 "Q. Let me show you a document we'll mark as 527.

13 MR. SCHILLER: The next document, Your Honor, the
14 witness will be shown is BCI 413, the last tab in your binder.

15 (Video Deposition Testimony Played)

16 "Q. Do you recognize this document?

17 "A. Yes.

18 "Q. Would you describe what it is, please?

19 "A. It's an AK that Lehman Brothers Holdings, as a public
20 reporting company, had to file under the AK rules given in the
21 entry into the asset purchase agreement, it's a material
22 contract.

23 "Q. You were involved in the drafting of the AK?

24 "A. Yes, reviewing it.

25 "Q. Did you offer -- did Simpson review and revise the

1 document before it was issued?

2 "A. I'd say reviewed and commented.

3 "Q. Okay.

4 "A. I don't recall who was actually the draftsman.

5 "Q. But Simpson would have reviewed it?

6 "A. Yes.

7 "Q. Make sure it was accurate and appropriate?

8 "A. Yes.

9 "Q. And if you would turn back to the actual AK itself,
10 there's a description, looking at the first two paragraphs, it
11 says "Asset purchase agreement, Barclays, Inc." and about half
12 way down the first paragraph it says, "In addition Lehman and
13 Barclays entered into a letter agreement dated as of September
14 20th, 2008 (it was a letter agreement) and together with the
15 original agreement and the first amendment, the asset purchase
16 agreement," do you see that language?

17 "A. Yes.

18 "Q. And was that in fact an accurate description of the
19 documents that constituted the transaction?

20 "A. Yes.

21 "Q. And in the second paragraph, at the end, it notes that the
22 bankruptcy court granted the sale on September 20th, 2008. Do
23 you see that?

24 "A. Yes.

25 "Q. Was it your view that the sale that was granted was the

1 sale defined by the agreements identified in the former
2 paragraph?

3 "A. That is my understanding although I wasn't involved, as I
4 said, with the bankruptcy court proceedings so I don't know
5 what was described and actually approved.

6 "Q. You knew that the bankruptcy court approval of the
7 transaction came late on the night of Friday, September 19th or
8 early in the morning of the 20th?

9 "A. Yes.

10 "Q. You knew that?

11 "A. Yes.

12 "Q. And you knew at that time the clarification letter had not
13 been finalized, at least in writing, correct?

14 "A. Correct.

15 "Q. And you knew that the clarification eventually was --
16 letter was finalized on the morning of September 22nd, correct?

17 "A. Yes.

18 "Q. And you knew there was no further approval of the sale
19 documents, including the clarification letter, after
20 September -- the early morning hours of September 20th,
21 correct?

22 "A. I did not know of any others.

23 "Q. You didn't believe there was any other court hearing or
24 approval process?

25 "A. I was not aware.

1 "Q. Okay. Did anyone -- did Simpson or anyone else, any other
2 party, to your knowledge, express any belief that any further
3 court approval of the clarification letter or sale transaction
4 was necessary?

5 "A. I don't know of anyone at Simpson that did and I can't
6 speak for others. But that's something I would have assumed
7 Weil was responsible for.

8 "Q. But you were at Weil during the negotiations of the
9 clarification letter and to your knowledge no one took the
10 position that any further court approval was needed for the
11 clarification letter, correct?

12 "A. I don't recall anyone taking that position.

13 "Q. And in the subsequent week, after the closing of the deal,
14 do you recall anyone, at Simpson or otherwise, expressing that
15 point of view that further court approval was necessary?

16 "A. No.

17 "Q. I'm going to ask you to turn to page 3 of the APA, under
18 key assets sold by Lehman, do you see that section?

19 "A. Yes.

20 "Q. It says "Lehman's United States and Canadian investment
21 banking and capital markets business," do you see that?

22 "A. Yes.

23 "Q. Is that consistent with your view of this transaction,
24 that it was essentially a sale of the business?

25 "A. Yes.

1 "Q. And in the broad sense. So just to be clear, at no point
2 were you told that the deal was supposed to be -- was supposed
3 to somehow be predicated on or involve the value of assets,
4 ultimately became the value of liabilities?

5 "A. I'm unclear as to the exact meaning of the question.
6 There's certainly a portion of the business that was sold
7 referred to as the matched book but that was part of the assets
8 and liabilities. That was, sort of, viewed generally; my
9 understanding was, as assets equals liabilities. But that was
10 part of the overall transaction.

11 "Q. Because the intent of the original agreement was to sell
12 the business, not to sell some particular value of assets or
13 liabilities?

14 "Q. Not necessarily because the language used in the
15 definition of purchased assets, my sense was I was not
16 surprised to see a clarification letter putting a final line on
17 what may have been intended and definition of purchased assets
18 and liabilities, more of a description as to what particular
19 assets, in broader terms, might have covered in part. If there
20 were actual changes to the agreement then that again was
21 something that was in discussions between the principals that
22 we weren't a part of.

23 "Q. I'm not sure I understand. The clarification letter
24 changed the assets that were being conveyed.

25 "A. Something that could have been a combination of two

1 things. It was changes in language that could have changed
2 assets or added more detailed explanation of the original
3 assets that were intended to be covered as to exactly what that
4 encompassed in further detail. And between the two and having
5 not been part -- each part of those discussions.

6 "Q. Did you make -- did Simpson make any effort to add a total
7 value of the assets being conveyed after the revisions made in
8 the clarification letter to the original APA?

9 "A. No.

10 "Q. You didn't consider it important?

11 "A. What I considered important was making sure that the
12 language that the lawyers put together reflected the
13 understanding between the principals and just making sure that
14 people did go back to the principals and have them look at the
15 language, say is this the deal.

16 "Q. And as you sit here today, do you think that you did that
17 successfully?

18 "A. I hope so.

19 "Q. Well, putting aside the specific element, did you ever
20 hear that the deal that was struck between the parties involved
21 a -- did you hear or understand that the deal between the
22 parties involved any type of agreement that there was a cap on
23 assets such that assets over some dollar figure couldn't be
24 transferred?

25 "A. No."

1 MR. SCHILLER: That concludes the deposition, Your
2 Honor.

3 THE COURT: Okay. Do you want to present your
4 objection?

5 MR. MAGUIRE: If it please the Court. Yes, Your
6 Honor. Specifically, our objection is as to the testimony that
7 appears on pages 78 and 79 of the transcript. And that is
8 testimony concerning the parenthetical that the witness was
9 shown that appears in the final executed clarification letter.
10 The witness testifies repeatedly that he was not involved in
11 the negotiations. Therefore, there is no foundation for him to
12 say anything about the business deal, what the understanding
13 was between the parties, what the negotiations were, or what
14 the discussions were. The witness, I believe, testified at
15 page 18 at line 7 "Well, I wasn't part of the discussions
16 between the principals as to exactly how the deal was cut, and
17 so I can't say what elements of the deal were important to
18 them. Then on page 20 he says again, at line 7, "I mean,
19 again, I just wasn't part of those conversations". And there
20 are several other references, that I'm happy to refer the Court
21 to, where the witness repeatedly confirms that he had no
22 involvement in any discussions between the principals, and,
23 therefore, is in no position to provide any understanding based
24 on what the parties had.

25 What that leaves us with is no foundation for any such

1 understanding, and we're left with nothing other than a
2 witness, a lawyer, who has provided us with an executed
3 contract and is giving the reading that he gave of an executed
4 contract. That, of course, is nothing other than a legal
5 opinion, which is, of course, reserved for the province of the
6 Court. And, so, I think on both of those grounds it's
7 improper, and, of course, I think it is particularly improper
8 to try to use testimony such as this to suggest that prior to
9 the execution of the agreement there was some sort of
10 understanding by the debtors' counsel that Lehman cash would be
11 transferred to Barclays. So that's the objection, both
12 foundation and improper legal opinion.

13 "Q. Okay.

14 MR. SCHILLER: Your Honor, Mr. Keller was a 30(b)(6)
15 designee on topics including Simpson's understanding that
16 Barclays was acquiring exchange-traded derivatives and the
17 margin and his understanding of the drafting process. Both of
18 those topics are laid forth in the notice that we presented to
19 the Court. And he's asked if he understood, Simpson understood
20 at the time of the transaction the exchanged-traded provision
21 of the clarification letter, referred to collateral including
22 cash, and he said yes. His answer, and the firm's answer, is
23 based on their participation in the drafting process, the back-
24 and-forth they observed. They were there. They did receive
25 it. He received drafts, he acknowledged. He said he read them

1 at the time. And he testified to what his understanding was at
2 the time. It's not being offered as an opinion, a lay witness.
3 It's not being offered as a legal conclusion, Judge. That is
4 your conclusion to make. It is offered for Simpson Thatcher's
5 state of mind, as the lawyers for the estate, throughout this
6 process of finalizing the clarification agreement.

7 And the objection that there's no foundation because
8 he lacked persona, he testified to what his knowledge was, his
9 contemporaneous knowledge and his state of mind, when he read
10 it. And we offer it for that purpose. He says he had that
11 state of mind then and he has it now. So he has personal
12 knowledge, and under both a 30(b)(6) notice and the question he
13 was asked there's adequate foundation for that answer, Judge.

14 THE COURT: I'm going to strike the testimony from my
15 consideration, principally because Mr. Keller makes clear that
16 he was in the backseat throughout this process, had no personal
17 involvement in the drafting of the language in question, was
18 not sufficiently connected to the development of this
19 parenthetical to be a meaningful fact witness with respect to
20 the subject matter, and, in effect, as I read the testimony and
21 as I heard and observed the testimony as it was being played,
22 Mr. Keller was simply answering questions, at least as to this
23 subject matter, as a lawyer interpreting language in a
24 contract. To that extent it doesn't assist me as finder of
25 fact, and I don't view it as appropriate testimony under the

1 circumstances. So the objection is granted.

2 Now, it's 12:30, and we've filled the morning.

3 MR. SCHILLER: Your Honor, before we adjourn may I
4 just address to Your Honor what will happen tomorrow to avoid
5 any surprise and to mention one issue that's come up?

6 THE COURT: I prefer knowing in advance, although
7 surprise is occasionally amusing.

8 MR. SCHILLER: Your Honor, as you know, Mr. Lewkow
9 will testify tomorrow. Vic Lewkow, Cleary Gottlieb, who is the
10 lead lawyer for Barclays. In addition, over the weekend we
11 wrote our friends and asked that they withdraw objections to
12 certain exhibits which we want to offer. Those exhibits are e-
13 mails of creditor committee advisors or Lehman employees which
14 are party admissions, so they're not hearsay. And some
15 Barclays' e-mails that constitute business records. We want to
16 offer those to the Court without having to put custodians on
17 the stand for authentication.

18 And, tomorrow, if the objections are not withdrawn,
19 then we might -- will raise with the Court, offer those
20 exhibits and talk briefly about the several documents we wanted
21 admitted.

22 THE COURT: Okay.

23 MR. SCHILLER: Thank you.

24 THE COURT: Is there anything more for today?

25 MR. SCHILLER: Not on Barclays part, Your Honor.

1 Thank you.

2 MR. GAFFEY: Your Honor will recall that on Friday we
3 promised you a letter brief. Are you guys ready on this?

4 (Pause)

5 You'll have it by the end of the day. Both parties
6 sets of briefs on the GFS point, Your Honor, because we ended
7 early today, and I got lucky and they did not unveil a binding.
8 I think we need about another two hours or so. End of the
9 business day, yes.

10 UNIDENTIFIED SPEAKER: That's fine.

11 MR. GAFFEY: Okay.

12 THE COURT: Are they going to be submitted
13 simultaneously?

14 MR. GAFFEY: Yes, they are. That's what we had
15 agreed, Your Honor.

16 THE COURT: Fine. So I'll wait until they're both
17 ready for submission.

18 MR. GAFFEY: Your Honor, just one question I wanted to
19 ask as we're proceeding that goes to our witness planning. I
20 think for Thursday we have both Mr. Romain and Ms. Leventhal on
21 the calendar.

22 THE COURT: Yes.

23 MR. GAFFEY: And I wanted to get a sense of -- because
24 we're assigning those differently. I assume that will be a
25 full day, as to the two, and I wondered if we could be told who

1 would go first, as between them.

2 MR. SCHILLER: Mr. Romain will go first, Judge. The
3 government advised that Ms. Leventhal is not available until
4 the afternoon, and we do expect that to be a full day..

5 THE COURT: I expect it to be a full day too.

6 MR. GAFFEY: Yes, I'm actually a little concerned that
7 we'll finish both in the day, Your Honor.

8 THE COURT: Well, if we don't there's always the 7th.

9 MR. GAFFEY: Right. Thank you, Your Honor.

10 THE COURT: And we also have additional time on the
11 8th that I've made available, with one exception, which is I
12 have a conference call, which has been scheduled that morning
13 at 11 a.m., that will probably take around forty-five minutes.
14 So to the extent you're choosing to use September 8th just take
15 that into account for scheduling purposes. Okay? I'll see you
16 tomorrow then. Thank you. We're adjourned.

17 (Proceedings concluded at 12:33 PM)

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C E R T I F I C A T I O N

I, Pnina Eilberg, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Pnina Eilberg (CET**D-488)
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